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HISTORY OF THE Weksel

Bill of Exchange
and Promissory Note

Sergii Moshenskyi

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History of the Wechsel

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Bill of Exchange and Promissory Note



Sergii Moshenskyi

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FOREWORD TO THE ENGLISH EDITION

THE WEKSEL AS a legal institution and a universal financial instrument was formed over the course of a long period of time until it acquired the modern form. As a result, it is impossible to correctly estimate the economic and legal essence of this original financial instrument without research of the history of the *weksel* and *weksel* operations.

Although there are plenty of sources devoted to *weksel* operations, including particular aspects of its history, the works, directly concerning the history of the *weksel* and *weksel* operations, are few.

There are two systems of *weksel* law that were formed over the course of *weksel* circulation development in the world—the Genevian and British-American systems of *weksel* law. The author wrote this book in the context of continental law, more specifically in the context of Genevian *weksel* law. In this connection, there were some terminological complexities. The concepts of *promissory note* and *bill of exchange*, developed in the system of British-American law, do not correspond absolutely to the concepts of continental law.

In the British version of Genevian *weksel* conventions¹, the English term *promissory note* (French *billet a ordre*, German *eigener Wechsel*) and the English term *bill of exchange* (French *lettre de change*, German *Wechsel*) are used to reproduce the concept.

Therefore, in the text of this book, the English concept *promissory note* is used to designate *weksels*, which incorporate the promise of the drawer to complete a direct payment on presentation of the bill, and the drawer himself is obliged to pay

the specified sum to the holder of the *weksel* (i.e. this type of *weksel* refers to French *billet a ordre*, and German—*eigener Wechsel*).

The English concept of *bill of exchange* is used to designate bills of exchange where the drawer is obliged to pay the specified sum to the holder of the *weksel* via a third party—the drawee (French *lettre de change*, German *Wechsel*).

This approach is caused by the fact that the tradition of continental *weksel* law also includes the generic concept of the *weksel* (from German *Wechsel*, Polish, Russian and Ukrainian *wekseh*), to designate the *weksel* document and the *weksel* obligation as a sort of written debt obligation (both *promissory note*, and *bill of exchange*). This explains why the author has used the concept of *weksel* as a generic name for this financial instrument which is absent in the English language.

FOREWORD

A *WEKSEL* IS a generic form of a Bill of Exchange (Bill), or a Promissory Note, or whose legal framework and financial characteristics were developed over a long period of time during which it evolved into its present state. It is impossible to correctly estimate the economic-legal essence of this peculiar financial tool if the history of the *weksel* and its procedure are not studied. Though there are plenty of sources about *weksel* operations, including some aspects of their history, there are not as many works directly connected with the history of the *weksel*'s development and evolution.

The *weksel* history and operations study derives a lot of data from the history of economies and law. This accounts for an interdisciplinary character of this research. The works which consider the *weksel* history from the legal aspect do not often take into account the socio-economic processes, without which it is impossible to understand the peculiarities of the evolution of such an integrated tool as a *weksel*. History of development of *weksel* as a legal instrument, as well as the chronology of its commercial evolution, is inseparable from the history of commercial credit and payment transactions as a whole.

Research shows that the West European type *weksel* (i.e. the bill of exchange in its classical meaning) appeared in Italy in XII-XIII centuries, similar to the *weksel*-written debt commitments which existed at all times and in all countries with the developed commodity-money relations and trade; the trade operation's general evolution required commercial credit and safe money transfer from one place to another.

We clearly distinguish the European type *weksel*, its prototypes, and the *weksel* analogues. All ancient forms of written debt obligations that are similar to the *weksel*, but lack a definite form and significant features of the European type *weksel* may be categorized as *weksel* prototypes.

In addition to the *weksel* prototypes, we examined the *weksel* analogues in non-European cultures, which represent the completely formed institutions of written debt commitments in China and the Arab Caliphate. Though the *weksel* analogues were developed in more detail than the *weksel* prototypes in the ancient World, they were eventually replaced by the European type *weksel*.

In the second part, the similarities between the prototype history of Ancient Russia and modern-day Russia and Ukraine are discussed. Similar to other world regions, the first forms of debt commitments are seen as inscriptions on wooden boards in Novgorod and Pskov.

Regarding this research of methodological concepts, the author prefers the approach of Fernan Braudel and other French historians, who shared their views with “*Annales*” magazine. Their motto, “Back to the primary sources,” inferred the use of various historical materials and economic facts.

The intention to adhere to such a scientific research-style determined the recourse to a wide scope of sources on the history of economies, money circulation, and commercial credit. Many of these editions are rare and difficult to locate. Great help was provided by the personnel of the United States Library of Congress, particularly Bonnie Coles from the photo duplication department (photoduplication@loc.gov), to whom we express our gratitude for the selection and duplication of many materials used for this work. In addition, we would like to thank the employees of the Ukrainian Central state historic archive in Kiev (TSGLIAK), who helped locate records of Ukrainian debt documents of XVII-XVIII centuries, and the State historic library of Ukraine.

PART I

EARLY PRECURSORS OF WEKSEL TRANSACTIONS

1.1

Weksel Origin Theory

THE FIRST WORKS on the *weksel* precursors' appearance and distribution came around in XVI-XVII centuries. Their authors were the so-called cambists—Benvenuto Stracca, Sigismondo Scaccia and Raphael de Turri¹. Later this issue drew the attention of many new authors. Researchers of the long history of the *weksel* and *weksel* operations enabled them to comprehensively evaluate different theories of its origin. The attempts to classify these theories are seen in the works of various scientists—from the Russian pre-revolutionary scientists (I. G. Tabashnikov and G. F. Shershenevich) to the modern ones (S. M. Berveno, V. L. Yarotsky, A.V. Demkovsky, etc.)². The classification of the *weksel* origin theories in order of their appearance would be the most logical, as this order reflects the evolution of scientific beliefs about the preconditions of the *weksel*'s operational development.

As far back as XVI-XVII centuries the works of the cambists—Benvenuto Stracca (the first edition in 1558), Sigismondo Scaccia (the first edition in 1619), Raphael de Turri (the first edition in 1641)—reflected the idea that it is impossible to consider the *weksel* (in the meaning of the bill of exchange) as an invention of a sole person or even a group of people. It existed wherever trade operations were carried out (in various forms and under different names), because no matter how simple the trade, it always required the use of credit and a certain *weksel* prototype³. Raphael de Turri compared the appearance of the bill of exchange with many nameless brooks merging into a great river⁴. The cambists' point of view is especially interesting, as they were chronologically closer to the time of the bill of exchange distribution in Italy than authors of the later period⁵. F.A. Biener⁶ shared such an approach and W. Endemann

pointed out that the theories attributing to the invention of *weksel* operations to a certain person, group of people, or city distort historical facts⁷.

In the end of XVII century Dupius de la Serra's book "The Art of the bill of exchange"⁸, first published in 1698 and later included in one of the editions of Jacques Savary's well-known work (1622-1690) "The Perfect negotiator," narrated a legend about the bill of exchange invention of the Jews, who were considered dealers and merchants in medieval Europe, similar to the Phoenicians in the ancient world. This legend was favoured by Jacques Savary, who thought that the ancient Roman law did not contain information about bills of exchange, and that they were invented by the Jews, who were repeatedly exiled from France during the reign of Dagobert I (640), Phillip August (1181) and Phillip the Long (1316). When the Jews settled in Lombardy they found a way to transfer their money by means of special secret letters, written in brief and exact expressions, which were handed over through foreign merchants. Owing to the exiled Jews, bills of exchange appeared in 1291 even in Turkey⁹.

In the book "The Jews and capitalism" (first published in 1911)¹⁰, Werner Sombart (1863-1941) supposed that it was the Jews who made the economic life conform to trading operations (which is, in the author's opinion, one of the main features of developed capitalism) and also created the bill of exchange and the stock exchange. W. Sombart theorized that the Jews, who suffered persecutions in medieval Europe, resorted to the bill of exchange for maintaining secrecy and anonymity in financial operations. If an ancient debt obligation always required establishing two persons' relations, the bill of exchange was free from any personalities. With the creation of the stock market and the development of trade, this process strengthened. Gradually all economic life became subordinated to such anonymity both nationally and internationally. W. Sombart noted that the Jews ousted from Spain and Portugal were not allowed to take gold and money with them. Nevertheless, the refugees from the Iberian Peninsula quickly became the main financiers of Europe. The first (according to W. Sombart) bill of exchange was issued in 1207 by Simon Ruben, and in many Italian cities (particularly in Venice of the XVI century), the bill of exchange business was dominated by the Jews¹¹.

According to another point of view, the bill of exchange was created by the exiled from Italy. Ghibellines (political dissidents, mainly the Ghibelline nobility, adhered the policy of German emperors, who wished to spread their authority to Italy) or by the Guelfs—the opponents of the latter policy, who belonged to social trade circles. The Ghibellines were ousted from Italy by the Guelfs and settled in Amsterdam. Like the Jews, they used the same method of returning the money they had left in Italy. In J. Savary's opinion, which was later shared by Ch. Montesquieu in the book "About the Law Spirit" and by other authors of the time, it was due to this that Amsterdam merchants began to use and distribute the bill of exchange in Europe (particularly in France) with the help of Lyon's merchants, who had extensive commercial contacts with Amsterdam¹². It is difficult to call this widespread legend a scientific theory of the bill of exchange origin, because there is no concrete historical evidence confirming this point of view.

Another theory of the bill of exchange's origin is connected to the Crusades. According to this theory, the bill of exchange appeared because it was required to transfer huge values captured by crusaders¹³ to the Papal treasury. It was also required for the activity of the Order of Knights Templars, who were established due to the Crusades. The Order's initial purpose was to protect trade caravans from Europe to Palestine. The Templars' sphere of influence was territorially divided into provinces, or commandorias. Each of them had their sales offices. Initially, the Templars' financial activity supported pilgrims in Palestine. However, in XII century there appeared a custom to lend money to travelers (the first known case of such loans dates back to 1135). Credit volumes increased, and during the Crusade, the Order provided financial services to the King Louis VII and the Pope Alexander III, who had been exiled from Rome¹⁴. The quantity and volume of the Order of Knights Templars' credit operations were the largest among other Orders (Teutonic, Franciscan, Joanite). At the end of XII century, it was already the first-rate financial institution of Europe with two central offices (the so-called *templum*) in Paris and in London, with numerous branches in French cities and in the Mediterranean countries. At that time, French and English kings, barons, and big monasteries invested their money with Templars, entrusting them with tax receipts, bill of exchange payments, and money transfers. They also received loans and securities from them¹⁵. The Order of Knights Templars accumulated an enormous wealth (which became the reason of its liquidation in XIV century in the reign of the French King Phillip the Beautiful). The need of money transfer from one commandoria to others made Templars utilize the bill of exchange¹⁶. However, data about the Templars' bill of exchange operations is rather limited and it is unknown whether they used experience of Italian campsores or borrowed this credit tool in Palestine from Muslim or Jewish bankers. Had the Order remained, it would have been the Templars who arranged deposit and banking business in Europe rather than Italian campsores¹⁷.

W. Endemann reasonably pointed out the attempts to connect the *weksel's* origin with some people or events are not tenable because in fact its creation was caused by a number of objective social and economic reasons¹⁸.

The first *weksel* origin scientific theory appeared in the beginning of XIX century and belonged to Franz-August Biener (1787-1861). According to his theory, the Italians are to be considered *weksel* creators as they began to use bills of exchange¹⁹. F. Biener justified his theory by the fact that the first bill of exchange documents known at that time originated from Italy. It was connected with the formation and development of European international trade, the pioneers of which were the Italians. In addition, book keeping was developed in Italy and cambists (the first authors of the works about bill of exchange operations) were also the Italians. Finally, the bill of exchange terminology (acceptance, endorsement, giro, aval, drawer and drawee, remittance, letter of advice) are of the Italian origin. The contrary argument may be the fact that the Hans German merchants carried out substantial trade-commercial operations almost simultaneously with Italian merchants.

In the second half of XIX century, German authors wrote many works dedicated to *weksels* and their appearance. Max Neumann expressed an idea that the *weksel* was created by the Hans German merchants, because their increased trade with different countries required bill of exchange operations²⁰. Neumann took into account some found medieval German debt documents, which he considered as bills of exchange. Although this stand was supported by Otto Stobbe, Wilhelm Endemann was critical to it, denying Germany's own tradition of bill of exchange operations²¹. We will study this theory in detail in the separate item dedicated to the bill of exchange circulation development in Germany.

At the same time, the German authors (C. Einert, F. Liebe) expressed the ideas that in the Middle Ages, the *weksel* was created by merchants and money changers almost simultaneously in different countries. These merchants did not know anything about Greek *trapezits*, ancient Roman *argentarii*, or the Roman law. By means of the bill of exchange, they tried to avoid legal restrictions of their commercial interests, mainly imposed when the medieval Christianity advocated the principle that any method of enrichment, except simple work, was obviously sinful, unlike the ancient period when commercial activity was considered more noble and attractive than simple work. It especially related to interest credits. Such activity was despised as early as ancient times, and in medieval Italy. Money changers (*campsores*) were called *cani Lombardi*—Lombardic dogs²².

These circumstances compelled medieval merchants of different countries to search for the methods, which allowed them to avoid these restrictions for their profit and commercial activity. The bill of exchange turned out to be the most convenient for this purpose. It enabled these merchants to transfer only a debt commitment document rather than money for long distances. The bill of exchange's obvious advantages were very soon noted, promoting its distribution alongside with gradual development of the trade laws.

For the first time, such point of view was expressed by the German lawyer Carl Einert (1777–1855) in his work “The Wechsel Law and Wechsel Business in XIX century” and by Frederick Liebe in the book “The Draft Wechsel Charter for the Duchy of Braunschweig”²³. This theory was also supported by Max Neumann, who did not try to prove that the *weksel* originated in Germany, but rather defended the idea that the *weksel* independently (without any foreign influence) appeared simultaneously in different countries (including in Italy, Germany, and in Sweden) due to objective economic preconditions, proceeding from the research of the records of credit agreements of the Hans merchants²⁴.

Two more theories of XIX century belong to Gustav Lastig and Carl Freundt. Lastig believed that the *weksel*'s origin was connected with debt transfer orders (first oral and then written) to the money changer or to the banker with whom the depositor had the account²⁵. In our opinion, this operation led not to the appearance of the *weksel*, but of the check—a simple payment order, which is not to be identified with the *weksel*.

C. Freundt theorized that the *weksel* originated from payment orders or payment mandates, which monarchs and other public agents issued to their treasurers. Jules Valeri was also this theory's advocate, believing that such payment orders were known in medieval Europe as early as XIII century. They appeared during the Crusades when great amounts of money were required to be transmitted for long distances. According to J. Valeri's opinion, a brief and directive style of these documents can be compared to the text of classical bills of exchange. Nevertheless, as was pointed out by V. Holdswart, who criticized J. Valeri's idea in the work dedicated to the English law history, the economic function of bills of exchange and mandatory payment orders was different. The main function of the bill of exchange was primarily money transfer in the creditor's interests and the function of mandatory letters and payment orders—debt settlement in the debtor's convenient place²⁶.

This theory's weakness lies in that such mandates had no attributes of the bill of exchange, which not only certifies a debt obligation and determines the payment order, but is also a tool based on the credit and exchange operation. Evidently this theory resulted from some mandates' similarity with bills of exchange, in particular mandates issued by the Saint Louis during the seventh Crusade²⁷.

The theory of the *weksel*'s origin began to come into existence as far back as XIX century. Various authors in their works tried to search for the most ancient *weksel* prototypes. At the end of XIX century to the beginning of the XX century, this theory was more frequently presented in the works of Russian authors. Its essence consists in that the *weksel* as a money transfer tool was already known in ancient Greece and Rome where the trade activity reached a high level of development.

It shall be noted that despite the significance of the ancient *weksel* origin theory, which introduced new facts and data in science, only *weksel* prototypes appeared in the ancient times, whereas the modern-day *weksel*—a financial tool with definite characteristic features—appeared much later. Even W. Endemann pointed out that the external similarity of ancient financial tools (in particular of different payment orders) with the *weksel* is illusive. Only a detailed comparative research of the legal nature of ancient Roman payment orders and *weksel* obligations allows for the assumption that the legal basis for each is entirely different²⁸.

The theory of the Arabian *weksel* origin is based on the assumption that in X-XI centuries, credit documents similar to the bill of exchange were used in the countries of the Middle East. As was noted by F. Brodel, all credit tools—the bill of exchange, the payment order, the debt acknowledgement, the bank note and the check—were familiar to merchants of the Muslim countries even in X century, which is confirmed by numerous documents from the archive (the so called *genizah*) of the old synagogue of Cairo. Under the influence of the Muslim countries' merchants in XIII century, the West opened for itself the *weksel*, which after the Crusades spread throughout the Mediterranean²⁹.

According to another theory, financial tools similar to the *weksel* appeared in China owing to the invention of paper. In the days of the Tang dynasty (VIII century), the

so-called *feitsyan* (flying money) were widely used for money transfers. During the Sun dynasty (XI century), they became a payment tool called *bintsyan* (convenient money). Due to the high profitability of these financial tools, they were monopolized by the state. This point of view is widely presented in Chinese research³⁰. One of modern western authors, William Baumol, also supports it. He concluded that the *weksel*, as well as paper money, was created in China³¹. These theories will be studied later, when the origin of financial tools similar to the *weksel* in the countries of the Far East is discussed.

Referring to the history of non-European debt obligations, it shall be taken into account that modern economic science has elaborated a certain categorial device, used for the analysis of the monetary circulation features and specific credit financial tools (in particular *weksel*) in different economic systems. Studying non-European financial tools of the ancient World, it is necessary to remember that in the economic history of Europe, including in the history of securities, there were no direct analogues of similar credit tools. It is impossible not only to completely identify these tools with *weksels*, but it is also required to use authentic concepts, which cannot be adequately conveyed by the European languages. When such a methodological approach is applied, the primary concepts themselves become the object of the analysis. Their contents are not distorted by excessive associations and parallels with the economic history of the European countries³².

So we come closer to the relationship between the subject and object of our research. If the subject is the history of the *weksel* formation according to the European economic tradition, then the object is the history of credit documents of different epochs and cultures, similar to the *weksel* by their economic functions. However, in the ancient World and in the countries of the Far East such documents existed and there is no ground for neglecting them. In the modern world, only one type of *weksel* was distributed—the West European bill of exchange, the classical form of which appeared in XII-XIII centuries in Italy. This *weksel* of the classical western type became the key tool of the European capitalism, and the bill's of exchange attributes are well-defined by the bill of exchange law norms.

This research is limited to the West European bill of exchange and promissory note and their counterparts in other cultures. That is why despite the important scientific data about the bill of exchange and promissory note prototypes in the ancient World and its analogues in the Muslim countries of X century, we do not consider these documents as West European bills of exchange and promissory notes (i.e.: to regard the debt bondage in Russia and obliques in Ukraine as *weksels*).

Therefore, in our research we specify the *weksel* prototypes—credit documents of the ancient World epoch—and the *weksel* analogues—credit documents of other cultures (the Islamic East, India, the countries of the Indian Ocean basin, China), which existed in X-XVIII centuries.

The economic reasons for the *weksel*'s appearance (as well as the *weksel* triangular mechanism) are as ancient as commodity-money circulation between remote cities and countries, because a desire to avoid cash transportation was obvious and natural

for two reasons—safety and convenience³³. Credit is equally ancient by its origin. As was noted by M. Weber, in each place where money was required, there immediately appeared persons eager to lend money. This occurred in Babylon, Greece, Rome and China. Creditors financed wars, piracy, and the development of colonies. They also acted as speculators, making profit on money operations³⁴.

The study of the main approaches to the *weksel*'s appearance restores the complete picture of this process. Even W. Endemann pointed out that for a true picture of the *weksel* origin, it is necessary to see all historical preconditions of the distribution of *weksel* operations as they were in reality rather than through the use of modern technology³⁵.

The bill of exchange distribution in Italy in XII–XIII centuries shall be considered a consequence of the organic synthesis of the historic and economic factors, which existed in Italian trade cities, such as the Roman law traditions and the Muslim culture influence. The developing trade and economic activity in the north of Italy promoted double entry in book keeping, as well as general writing development in Europe, which made possible the appearance of the first debt documents.

Though *weksel* prototypes can be found in various countries and during different time periods, all historical facts (relating to the history of the *weksel* and trade law as a whole) testify that the West European type of *weksel*—the bill of exchange—as a financial tool with its characteristic features originated in Italy. It was there that the existing motives led to the distribution of bills of exchange among money changers and bankers at first in the Italian cities and then throughout Europe³⁶. Furthermore, at that time in Italy, which consisted of several separate states, the cash payment itself was a credit bargain. Various currencies were circulated, and there was no uniform state which could guarantee the real value of money. Credit operations were also promoted in Italy because rather small investments became profitable due to the reduced gap between rural dealers and merchants³⁷.

Thus the *weksel* appearance is not to be attributed to a certain country or time. It shall be considered a logical consequence of the development of trade-economic relations. As all these complex factors occurred in Italy of XII–XIII centuries it may be considered that of all others it was medieval Italy, which rendered the main influence on the *weksel* distribution and the formation of the *weksel* law norms.

Having considered the main theories of the *weksel* origin, we shall dwell upon the classification of its historical periods. All such periods are relative as any logic models, directed at the restoration of real historical processes. That is why the classification of the historical periods of financial tools (including of the bill of exchange) will always be factitious.

However, the research logic assumes the classification of certain stages in the history of bill of exchange and promissory note operations, which is primarily required for the sequential presentation of material. It is important not to forget Marguerite Yourcenar's words that historians, interpreting the past, depict history as cause-and-effect relationship schemes, which are too obvious and definite to be true³⁸.

The majority of Russian researchers of XIX century agreed with the assumption that the history of the *weksel* circulation can be divided into three periods: Italian, French and German. Such classification was based on the territorial-geographical principle, typical of the science of XIX century. It was poorly connected with the economic essence of various stages of the development of *weksel* operations.

W. Endemann, the author of the well-known "Research of the Roman-canonical theory of the economy and law" (1874), suggested another approach with the following three periods in the *weksel* history: 1) before the beginning of XIV century (the appearance of the first *weksel* documents without the *weksel* operation legal basis); 2) the middle of XIV–the beginning of XVI centuries (the appearance of the works of lawyers-theologians, discussions about the legitimacy of *weksel* operations); 3) the beginning of XVI–the middle of XVII centuries (the period of fairs, the appearance of the *recambium* operation, as well as the canonical and legal basis of *weksel* operations)³⁹.

The inconsistency of the geographical principle of the *weksel* history periods became obvious at the end of XIX to the beginning of XX centuries. It relates to the so-called Italian period, which began in XII century and continued until the appearance of the endorsement which consisted of two documents–the notarially certified receipt, which played the main role and the payment letter. The attempts to create new, more detailed history of the periods of *weksel* operations are presented in the works of A. F. Fedorov and G.F. Shershenevich, who tried to differentiate initial and fair types of the *weksel*.

Another classification of the history of *weksel* operations was offered by T. Guhl (1880-1957) in the book "The Swiss obligation law" (the first edition–1933), who suggested such periods in the development of the *weksel* and the *weksel* law: 1) XII–the middle of XV centuries, a promissory note epoch (circulation of similar to the *weksel* debt documents); 2) the middle of XV–the middle of XVII centuries, the bill of exchange period; 3) the middle of XVII–the end of XVIII centuries, the period of the commercially endorsed bill of exchange (endorsement); 4) from XIX till XX centuries, an epoch of the national *weksel* law, which T. Guhl primarily associates with the formation of the German Wechsel law⁴⁰.

Regarding three traditional periods of the *weksel*'s development, Italian, French, and German, we share the opinion of V.A. Belov, who believed that it is expedient to speak not about the periods themselves, but about the *weksel*'s historical types. During each historical period, the dominating position was occupied by one particular *weksel* type, which co-existed with other types of *weksels*. The Italian *weksel* lost its significance when several-part debt documents came into disuse. The fair *weksel* type, which had new specific features, appeared. It was an all-European type of *weksel*, because fairs were already held in many countries of Europe. French, German and English *weksel* types almost simultaneously originated from the all-European fair *weksel*. They coexisted, though initially the French type prevailed, it was eventually succeeded the German type, which in the beginning of XX century shared the sphere of influence with the English type *weksel*⁴¹.

It is required to analyze primary sources, the texts of debt obligations and notarial records, in order to reflect adequate historical periods of *weksel* operations. The representative choice of documents of XII-XIV centuries enables us to reasonably select the first period in the history of *weksel* operations, when the *weksel* prototype was a notorially certified act and the payment letter was only auxiliary.

Having studied these documents, R. de Roover offered five periods in the *weksel* history. *The first period* (1275-1350) is characterized by the appearance of a new contract kind, unknown in the Roman law—the *weksel* contract. In *the second period* (1350—the end of XVI century) the notarial act was replaced by a simple business letter, which the dealer addressed to his correspondent, located in another place. The *third period* (the end of XVI—the end of XIX centuries) is characterized by the endorsement distribution, leading to the complete transformation of the nature of the *weksel*, which gradually lost its original money change function. During the *fourth period* (from the end of XIX century), the *weksel* became a credit tool which could adapt to diverse conditions. The *fifth period* refers to the second half of XX century, characterized by the unification of *weksel* operations⁴².

Considering the above mentioned different authors' views on the classification of the periods of *weksel* operations, the following period classification is optimal:

- 1) The *weksel* prototype appearance in the ancient World;
- 2) The *weksel* analogue appearance in the countries of the East—China, India, the Muslim countries (VIII-XII centuries);
- 3) The period of the *weksel*'s initial type in Italy of XII-XIII centuries (the *weksel* consisted of two documents: the notorially certified act was of major importance and the payment letter—of auxiliary);
- 4) The period of fairs when the *weksel* acquired its significant attributes (acceptance, protest, the *weksel* strictness), that is the modern *weksel* form;
- 5) The endorsement period (the *weksel* escaped the hands of Italian campsors and was spread in the majority of the European countries);
- 6) The period of the *weksel* obligation formalization (the *weksel* operation legal basis in the German *weksel* law);
- 7) The period of the unification of the global *weksel* circulation (from the beginning of XX century till present time).

It should be noted that many generalizations stated in the works of different researchers are connected with attempts to classify the historical periods of the development of *weksel* operations.

Most often these generalizations were reflected in the intention to present the development of credit transactions, including *weksel* operations, as continuous process. Once again it should be emphasized that any period classification is arbitrary and required only for the sequential presentation of the history of *weksel* operations.

1.2

Origin of Weksel's Precursors in the Ancient World

1.2.1. Weksel precursor appearance

THE MAJORITY OF researchers of the weksel's history believe that weksel operations appeared in XII-XIII centuries in Italian trade cities. However, there is a well-ground belief that such a complex tool as a bill of exchange could stem from nothing in XII century. As bill of exchange operations are the creature of the long practice of the commodity-money circulation, it would be logical to assume that they were created by merchants of different countries and that their first prototypes could be found in places with highly developed trade and commodity-money relations.

These prototypes of weksel obligations appeared as long ago as written debt commitments, used for simplifying commercial operations. According to M. Kozinski, the bill of exchange circulation prosperity in Italian cities completed a lengthy process of the development of debt obligations, the first of which had already appeared in ancient Greek and Roman law⁴³.

Let's study in more detail an approach, according to which the first prototypes of weksel operations are found in the features of money circulation of ancient Mesopotamia, Greece and Rome, when the development of crafts and trade promoted the formation of high level credit operations there. First, it is necessary to state some reasons concerning the approaches to studying the ancient economy as a whole.

The economic history of the ancient World was actively investigated since the second half of XIX century. The core subject of this research was the economy

of ancient Greece and Rome (due to plenty of survived written sources), but the ancient economy evolution was also studied at that time. Two main approaches (of K. Bücher and E. Meyer) were formed in the end of XIX—the beginning of XX centuries. According to the first one, the ancient economy was of the archaic, the so-called *oikos* type. Supporters of the second approach adhered to the tendency of the modernization of the economy and social structure in the ancient World, wishing to find in it parallels with classical capitalism⁴⁴.

The point of view of K. Bücher, who underestimated the significance of commodity-money circulation in the ancient World, is not likely to be considered correct. Although even more doubtful is the contrary opinion of E. Meyer, who exaggerated the trade significance in ancient Greece, and considered that the archaic *oikos* economy was completely replaced by the monetary one. Proceeding from it, E. Meyer concluded that the economic life of Athens of V-IV centuries B.C. had the same capitalist character as the economic life of England in XVIII century and Germany—in XIX century⁴⁵. There are no grounds to compare it with the economy of Europe of XV-XVI centuries and all the more so with XVII-XVIII centuries.

In due course both approaches were fully rejected, as based on the incorrect method of comparing the economy of the ancient World with the economy of the Western society of XIX century. Today, the approach based on M. Weber's idea about the specific character of social and economic systems of the ancient World and the inexpediency of the analogue search in the economic systems of other cultures and eras prevails in the ancient world economy research. M. Finley, the most authoritative representative of this approach, emphasizes that it is impossible to understand in principle the ancient economy on the basis of modern economic categories.

However, this approach's defect is the understatement of the real level of the development of commodity-money relations in the ancient society that contradicts indubitable facts. Though it would be methodologically incorrect to compare the economy of the ancient World with the European model economy, it does not mean that the development level of commodity-money circulation and credit operations in Babylon, ancient Greece and ancient Rome was low. The same also relates to the credit development in the ancient World and the appearance of the first prototypes of *weksel* operations.

Among German authors C. Grunhut was an adherent of the ancient *weksel* origin theory. He considered that written debt obligations—*syngraphs* and *chirographs*—appeared already in the ancient Greek law (with development in V century B.C.) and then got into the Roman law. As the *syngraph* text itself (and then—of the *chirograph*, which replaced it) was the reason for debt payment, C. Grunhut concluded that during the ancient time the *weksel* letter was used in money circulation, particularly in the operations of *trapezits* in Greece and *argentarii* in Rome. *Syngraphs* and *chirographs* were “the first *weksel* forms”⁴⁶. According to him, *chirographs* so deeply penetrated into the economic life of the Roman Empire that they did not disappear after its collapse. They were passed to French and Germans

in the form of *cautio* or *cautum praestationis*—a document which confirmed the debt obligation conclusion. Such documents (with the definition of the debt bargain conditions) could be redeemed or transferred to the third party, while it was required to submit it for the debt settlement. Thus, money transfer was not always the main purpose: quite often they also performed a credit function, and their form coincided with that of chirographs (weksel letters)⁴⁷.

Among Russian authors of XIX to the beginning of XX centuries, the ancient weksel origin theory was supported by A. F. Fedorov and A. A. Goldenveizer; in the 1920s, it was briefly mentioned by V. A. Selivankin and B. F. Movchanovsky. A. F. Fedorov noted that weksels were already used in ancient times, and there are no reasons to believe that the weksel appeared only in XII century in Italy⁴⁸. V. A. Selivankin also believed that the first weksel forms appeared in ancient times⁴⁹, though he did not substantiate his point of view. B. F. Movchanovsky wrote that although medieval Italy is thought to be the weksel native country, it was known in Greece, Mesopotamia, Judea and other states. The most evident features of the weksel circulation were observed in Greece. He supported his point of view by analyzing the activity of Greek money changers—trapezits—which was not limited to money exchange. Having received a certain sum they assumed obligations to pay to the third party the equivalent amount in another coin and in another place. To some extent, such operations can be considered weksel operation prototypes⁵⁰.

A similar idea was expressed by I. N. Shapkin⁵¹ and B. Yurovsky, modern researchers who believe that the first evidences of the weksel circulation are observed in the ancient World—in Mesopotamia, Egypt, Greece and Rome⁵².

At the same time, P. P. Citovich, G. F. Shershenevich and S. M. Barats did not at all consider possible appearance of weksel prototypes in ancient times, and I. G. Tabashnikov came to the conclusion that the weksel was not known to ancient peoples, including the Greeks and the Romans. He substantiated it by the fact that Roman lawyers would not only have mentioned such a financial tool, but would also have described it in detail.

Such approach goes back to the well-known work of W. Endemann, who stated that the weksel can not be regarded as a legal form, which came to us from the ancient period. In his opinion, a tendency to hold the Roman law as a source of all legal institutions and concepts, including the weksel, is not convincing. The weksel's ancient origin was also denied by the cambists—S. Scaccia and R. de Turri. An example of Cicero's letter with a request for money transfer is not an argument in favor of the existence of bill of exchange operations, because all money remittance documents have some similarity to the bill of exchange. However, the bill of exchange originated from them for complex reasons which appeared much later.⁵³

Evidently F. Brodel was right underlying the ingenuity of urban merchants and bankers, who used notes and checks in Babylon as far back as twenty centuries B.C. At the same time, he recommended not to modernize methods of their activity, though

the same practice existed in Greece and in Hellenistic Egypt, where Alexandria became the international transit center⁵⁴.

As it is impossible not to take into account the argumentative problem of the origin of *weksel* operations in the ancient World, we will consider it in more detail in order to understand the background of this assumption of the *weksel* origin during this epoch. The survived texts of debt obligations provide the basis to suggest that the first prototypes of *weksel* operations appeared in the activity of ancient money changers not during the antique epoch (when the general economic development made money the object of trade) but in more ancient periods—in Mesopotamia and Babylon.

1.2.2. Weksel prototypes in Babylon

The first financial tools of commercial credit were used by the ancient peoples—Phoenicians, Carthaginians, Egyptians and primarily Babylonians—in the period of their complete abode and money circulation appearance. For the clarification of the features of the development of commercial credit tools in the ancient world, it is required to consider the most ancient phase in their history, connected with Babylon—a city, which in biblical times became a symbol of commerce, money, and power.

In ancient Mesopotamia there was long-established and common practice of contributions of personal property into special well-protected temples, the priests of which were of impregnable honesty. There is nothing strange in the accumulation of surplus supplies in the temples used as storehouses—the economic function of temples in the ancient World is well-known. They were not only religious centers and archives, but also the first spots of credit activity and commercial operations, because the greatest riches were concentrated in them. It related to the temples in Mesopotamia and Babylon, where religious traditions promoted the development of trade and credit activity. These temples granted in the form of goods or money a part of the accumulated wealth to persons, who were in need of credit receiving a certain compensation for this. Such practice existed in Sumer temples 2500 YBC. The first known evidences of grain and gold loans are dated 2112–2004 B.C.

As a rule, creditors were merchants and loans were confirmed by a special contract, drawn up in the presence of witnesses. Property or personal guarantees of particular persons were the compulsory condition of their execution, and the role of documents was performed by records on clay plates. Such forms of writing in Mesopotamia and Babylon existed for a long time and were well-developed (plate durability allowed us to have samples of the first written debt obligations drawn up 4000 years ago).

In a similar way, trade and commercial credit developed in Ugarit—a trade city-state on the northeastern coast of the Mediterranean Sea. In the middle and the second half of II millennia B.C. Ugarit was one of the largest world trade centres with sea routes which led to Egypt, Asia Minor and the countries of the Aegean Sea, and land routes which connected Egypt with Mesopotamia. Ugarit's numerous documents often mention tamkars, commercial agents, who served in the administration of Ugarit's tsar. Evidently tamkars did not act independently and received the tsar's grants, required for commercial operations, though an opinion exists that they were independent merchants, who paid to the tsar a certain portion of their profit⁵⁵.

The credit practice prevalence is demonstrated by the fact that all those who granted commodity or money credits were started to be called tamkars, except merchants and persons engaged in business⁵⁶. However at the study of the origin of credit operations in Mesopotamia, it is important not to overestimate the role of temples as depositaries of values and money, comparing them with later time banks, because credit activity was constantly state supervised⁵⁷.

Chaldea's documents, dated XXIII century B.C. are indicative of the existence of trade-commercial unities named *birinr*⁵⁸. In XIX century B.C., Assyrian merchants from Mesopotamia created their commercial colonies in Cappadocia (Asia Minor). As some caravan travels lasted for years, trade between Ashur and Cappadocian colonies was carried out by means of credit operations.

When an Assyrian merchant from Anatolia granted to a merchant going with a caravan to Ashur a certain sum of money for the purchase of goods, it was confirmed by an IOU written on a clay plate. If the creditor wanted to return his money, he could give the debt obligation to another creditor—a tamkar, who purchased it either in face-value or at a discount⁵⁹.

Debt inscriptions on clay plates were usually standard: "*He (namely . . .) should pay to the owner of this plate*". Later private persons began to use similar wording in contracts, and the clay plate debt document enabled them to collect the debt in the specified term, thus the initial creditor's name was sometimes omitted. Apparently just Assyrian commercial agents, tamkars, were the first in history to utilize debt obligations on clay plates, using these obligations only among a limited scope of persons who recognized and accepted them. Ugarita's documents testify to a possible existence of agreements, which provided for mutual settlements and credit operations to the effect that one person gave to another person a certain quantity of silver for its transfer to the third party⁶⁰.

Credit operations further developed in Babylon, which since XIX century B.C. was the capital of the Babylon state.

Credit activity in Babylon was primarily connected with the temple of Shamash—the sun and justice god. This temple, according to B. Bromberg, can be called a prototype of the world's first credit institution. A significant part of the financial records found from this temple date back to the period of the reign of Sabium (1884–1831 B.C.)—the third tsar from the First Babylon dynasty⁶¹.

The main treasure accumulation source in such credit institutions was a 10% tax, which was paid in Babylon not only by individuals, but also by the whole cities and even by the tsar's family members. The following is a sample of such records, saved in Shamash temple:

*"The ten-percent grain tax to the treasury of the solar god in Ebabbar temple—from Nidintu, Belibni's son, for the month of Iyar (April–May) of the first year of the reign of Darija tsar . . . 10 gur of grain from the Pallukatu city . . . 10 gur from the Nikku city, 10 gur from the Rabbi city—or 10 gur from the Kurrasu city . . ."*⁶².

At first, the tax to the temple treasury was paid by grain and cattle. When a significant amount of grain was accumulated, temples sold it, increasing their stocks of gold and silver. Later, records appeared about payments made in precious metals (mainly by members of tsar's family and tsarist officers):

*"The tsar sends a tithe—six gold minas—to the great gates of Ebabbar temple. The 26-th day of Sivan (June) of the first year of the reign of Nabonid, Babylon's tsar"*⁶³.

The majority of the survived documents on clay plates date back to the so-called ancient Babylonian epoch—the time of the reign of the first dynasty tsars. The most famous of them was Hammurabi. These business documents were characterized by strict formalism with laconism and legal accuracy of statements. It shows that the debt obligation legal institution was well developed. The document's typical structure envisaged the following items: 1) the object of the agreement (silver or natural products); 2) the names of counterparts; 3) legal activity of counterparts; 4) the names of witnesses and the scribe; 5) the date. Loan agreements were usually of the following form: 1) the object of the loan; 2) the interest rate or the interest-free loan stipulation; 3) the obligatory wording: the debtor (the name) took a loan from the creditor (the name); 4) the time, place and way of the loan repayment; 5) witnesses and the date⁶⁴.

These documents show a well-shaped system of concepts. In general, documents were called *duppum*; a written agreement—*riksatum*; a stamped document—*kunukkum*. An interest-free loan had the name of *kiptum* (in the south of Babylonia) or *hubutatum*—in the north; coin exchange profit—*tappitatum* (in the south) or *niplatum* (in the north). A document about an interest bearing loan was known as—*kunuk hu-bu-li* and about an interest-free loan—*kunuk hu-bu-ta-ti*⁶⁵.

M. M. Margolin⁶⁶ named such debt obligations *hudu* in the bank history article. A. Bimman also mentions *hudu*, calling them circulating bank notes⁶⁷. It is a different transcription of the above mentioned concepts *hubutatum*, *hu-bu-ta-ti*, *hu-bu-li* with a root *hubu*—a written debt obligation⁶⁸.

M. Weber considered Babylonia as the place of the first bank notes (though certainly they were not the modern meaning notes, which can be freely circulated irrespective of an investor's contribution). In Babylonia, bank note prototypes were only a means of fast and reliable transfer of payments by the clients of ancient bankers. Of course, the attempts to modernize these operations were carefully treated because Babylonian bank note prototypes were used exclusively for local circulation and intended for a limited circle of merchants⁶⁹.

During the reign of the Babylonian tsar Hammurabi (1792–1750 B.C.), the practice of similar commercial operations was reflected in the well-known records "Laws of Hammurabi" (1704–1662 B.C.), which bear evidence not only of the debt document's existence, but also of the attempts to legislatively control credit relations. According to Hammurabi's laws, money transfer without a receipt was not valid⁷⁰. Only a surplus of products and then the money surplus (in precious metals accumulated on account of product surplus sales) became the main cause of the development of credit transactions in Babylonian temples.

The above mentioned Ebabbara temple was interested not only in credit and trade operations, but also in the production of fabrics. The temple was also a great land owner, which possessed fields and houses. In addition to tax collection, large commercial operations were carried out by the high priestesses of Shamash temple, to which significant wealth belonged⁷¹.

Among clay plate inscriptions there are numerous debt obligations in which the credit profit rate is specified:

*"Minutum borrowed 10 grain gurs with 1/5 gur for one gur remuneration
in Shamash temple and will repay the debt during harvesting.
Signatures of three witnesses (without the date)"*⁷².

This record shows that 20%-loan compensation was used even before the acceptance of Hammurabi's laws, in which the maximal loan interest was specified—33.3% (1/3). A similar form of debt records was kept in the classical and in the new Babylonian period, when the rate was again reduced to 20%.⁷³

Money trade was carried out in Babylon alongside with commodity trade. After the debt slavery was abolished by Hammurabi's laws, the activity of Babylon usurers became more civilized. However, the usury rendered strong influence on Babylonians' mentality, getting into all forms of business life.

At that time, there were rather widespread debt obligation records, the subject of which is a certain quantity of gold and silver (there was no coinage system in

Babylon). The following is a sample of such a record during Abi-Esuhā tsar's reign (1711-1684 B.C.):

"Idin-Samas borrowed five and a half silver shekels in Shamash temple and will repay the debt with the interest during harvesting.

Two witnesses.

The 26-th day of the month of Sebit (January) ⁷⁴.

Though the interest rate is not specified in this record, other similar documents have a clause: "as it is accepted in Shamash temple". In the above debt obligation, the interest can be determined by another debt agreement, concluded by the Shamash temple priestess—it was considerably lower than the standard 20% and constituted only 6%. At that time the usurious interest profit varied from 10 to 33.3% p.a. A 20%-compensation was the most widespread in money operations; the profitability of less than 20% per year was considered unprofitable.

In case of the debtor's doubtful solvency, the loan was secured by the pledge of the land, house, or other property. Sometimes it was not easy to get the debt repaid in Babylon, as the creditor had no rights to the debtor's freedom and could collect only the pledge. However it was unusual in the Babylonian society—the barefaced and open usury was banned. Therefore, loans were frequently granted through figureheads, who took the pledge, if required.

Each agreement was to be registered in writing. The debtor had no right to refuse payment, because he could lose a further credit—the utter ruin for the majority of Babylon's inhabitants. As credit relations were wide-spread in Babylonian society, Old Testament scriptures depicted Babylon as a symbol of ruthless usury and lucre.

It was well understood in Babylon that capital (this concept appeared in Sumer already in III millennium B.C., where capital was called *sag-du*; *qaqqadu* was used in Babylon) is money resources, which bring profit by credit operations⁷⁵.

When a loan was granted for commercial activity, a written debt obligation of this kind was issued:

"Zubapum and Sin-esmeanni borrowed the partner capital of 20 silver minas and 6 silver minas for free disposal—totaling 26 silver minas—from Shamash and Sin-esmeanni. After the trade travel they will return the silver with the accrued interest.

Six witnesses.

The 14-th day of the month of Tishri (September), the 37-th year of the tsar's reign ⁷⁶.

The debt agreement text shows that two persons entered into the partner's contract (a prototype of future commenda). Sin-esmeanni, one of the participants of

the partner's contract, served in Shamash temple and he himself (together with the Shamash god) acted as the money-lender.

Interest-free debt obligations were also popular, which were connected with the circumstances of loan granting. The debt agreement shown below was concluded with the Ebabbara temple's commercial agent for trade operations in other countries:

"Sin-bel-ablini, the son of Lipit-Ishtar, borrowed 1.5 shekels and 15 silver grains (Shamash measure of weight) in Shamash temple. After the trade trip he will return silver to Shamash temple.

Two witnesses.

*The 12-th day of the month of Marchesvan, the fifth year of the tsar's reign*⁷⁷.

The most interesting is the following debt obligation sample of Hammurabi tsar's period:

"Idin-Ramman and his wife Khumtani borrowed 5 pure silver shekels (at Shamash price) from Shamash and Idin-yatun. If they see an inscription on the market wall (with the order to return the debt) they should return the silver with the accrued interest profit to the bearer of this document.

Three witnesses.

*Elul month (August-September), the 35-th year of the tsar's reign*⁷⁸.

This debt obligation is a prototype of the bearer paper (with the debt maturity date provision), which already has some similarity to the *weksel* obligation. Generally these agreements show the debt obligation's gradual evolution in ancient Babylon from its elementary to rather complex forms, as in the latter case.

Financial-credit business especially prospered in Babylon in the subsequent centuries, in the so-called new Babylon period (VII-V centuries B.C.), when not only temples, but also private persons commenced financial-credit operations. During that time, Babylon's economy was characterized by the domination of large banking houses. In particular, there are historical records of the existence in VII century B.C. of Egibi and Murashu banking houses, who accepted money deposits⁷⁹.

The main functions of the Egibi banking house were to provide interest-bearing loans and keep deposits. Several usurers worked under its management, but only the house head had the right to conduct credit operations and keep deposits⁸⁰. There are also documents about credit operations carried out by the banker Shu and his son Nai.

In 577 B.C. Nai lent to Nabu-etir, the son of Amur-ru-natsir, 2 silver minas, 1 wool talent (it was equal to 12 silver shekels), and one oil vessel. After a while the debtor's obligation was transferred to Remut (Nai's creditor) on account of the debt repayment by barley for the amount of 1 mina 27 shekels. Thus Nabu-etir undertook to pay 1/2 of the debt to Remut and the other part—to Nai. In case of default of payment Nai had to settle with his creditor independently⁸¹.

At that time Babylon bankers accepted interest bearing deposits, effected the third parties' payments, and granted loans secured by the movable and immovable property, acting as mediators at the commodity purchase-sale. In addition, they executed mediate functions in concluding agreements.

The use of written *weksel* prototypes in the period of Nebuchadnezzar tsar's reign is demonstrated in the history of Nabu-aplu-iddin richman, who lived in Babylon. Having received a big inheritance, he quickly ran away with it and had to apply to usurers. As Nabu-aplu-iddin was a well-known person, usurers had trust in his debt documents, granting him loans within 15 years. In 561 when the debt became enormous, Nabu-aplu-iddin declared himself bankrupt and all his property was acquired by Nabu-ahhe-iddin, who undertook to settle the debt with the creditors. He paid in full to those of them, who had the bankrupt's property in pledge, and to those, who had only the bankrupt's debt obligations (V. A. Belyavsky incorrectly calls them *weksels*), Nabu-ahhe-iddin offered half of the amount; to those who did not accept this proposal he refused to pay at all. Nabu-ahhe-iddin so enriched himself by it that later he opened a famous Egibi Bank⁸².

We do not know which debt obligations are called *weksels* by V. A. Belyavsky, though the above given Babylon's written debt obligations allow us to get an insight into a possible form of these documents. A. B. Bimman's good remark should be reminded about the existence of ancient credit letters, requiring banker's payment, but according to him true *weksel* operations were nevertheless unfamiliar to bankers in the ancient world⁸³. That is why if such credit letters or written debt obligations are called *weksels* it is not only incorrect, but is also methodologically wrong, though they can be considered vague *weksel* prototypes.

The Egibi house's clients were mainly scribes and handicraftsmen. After the banker's death, the clients often went over to his successor. The following example is similar to the available documents about the debt obligation transfer:

"According to the agreement, which Nebokim concluded with Ardubel Nebokim will demand from Ardubel his debt on the arrival day. This debt with the interest will be returned to Nebokim by Neboitapsi instead of Ardubel"⁸⁴.

The operation of the debt obligation transfer is seen in more detail in the following document:

"Idti-Barduk-Balat settled Nabu-tultabshi-lishir's debt in the amount of 1.5 silver minas, taking out of pledge his two slaves—Shapf-kalbi and Ben-benanni by Iddin-Marduk Nur-Sin's proxy".

The document states that the creditor indeed returned the debt obligation to Idti-Barduk-Balat. On the following day, Idti-Barduk-Balat again repaid the same debtor's debt obligation secured by a slave in the amount of 35 shekels by Iddin-Marduk' order; in four days Iddin-Marduk purchased through Idti-Barduk-Balat three mentioned slaves for 2.5 silver minas, 2 minas of which had been already paid to the seller's creditors. In 523 B.C. the banker Imb took charge of the debt obligations of Nur-Sin family's debtors (which A. A. Martirosyan calls *weksels*) from In-Esagil-ramat-Nabai for debt payment demand⁸⁵.

From that time, there are records about commercial companies called *harranu*. These records resemble bank financing. Contracts on the arrangement of such trade-commercial unions can be divided into two types: 1) unilateral capital investment as abstract debt obligation (*u'iltu*) with the trade-purpose provision; 2) bilateral (or multilateral) capital investment with partners' equal rights.

In addition, market IOUs issued at the purchase of goods on credit are also mentioned among written debt obligations. After the debt discharge, an abstract debt obligation (*u'ilty*) was repaid and plate inscriptions were erased or the plates were broken⁸⁶.

As a whole, the mentioned facts indicate that Babylon can be considered the original place of usurious and credit transactions. Only Egypt and some cities of Phoenicia and Syria could be compared to Babylon on the credit development level. In ancient Greece and Rome, credit activity reached such development level much later. However, we should not overestimate the level of money circulation development in Babylon, where society's relations were in line with the specific economy of the ancient world countries. Credit activity did not become a separate professional sphere, being inseparable from trade, usury and slavery until much later.

1.3

Prototypes of Weksel Operations in Ancient Greece and Rome

1.3.1. Debt obligations in ancient Greece

IN IV CENTURY B.C. economic relations in Greek city-states reached a considerably high development level, especially in Athens where trade specialization began. Aristophanes' works bear witness to it, mentioning many commercial occupations and also money changers, or trapezits. A special trade class (*kapeloi*) was gradually formed. It was professionally engaged in commercial activity. Aristotle differentiated trade (*emporía*) and credit transactions (*tokismos*) in his works.

Money circulation between Greek cities required coin transportation. At that time, it was very risky for money operation participants. Plenty of city-states (polises) existed in Greece, where various coins were in circulation. Some of them were used only in places of issue. It compelled people to search for other methods to transfer money and exchange different coins. A maritime loan (*foenus nauticum*) became such a method. It appeared in Greece, as Greek police were located on different islands of the Aegean Sea and ancient Greek trade was carried out mainly by sea, quite dangerous at that time.

The main condition of the loan and interest repayment was the goods (or money) delivery to the destination place. In this case, the money-lender received the big interest—about 30%, but if a ship perished, he risked the total amount. In the case of

a ship wreck, a loan-granting person lost the right to demand the borrowed sum and its interest. The maritime loan was widely used in the ancient World (details about maritime loans are encountered in the speeches of ancient Greek judicial orators, including Demosthenes) until its forbiddance by the Roman emperor Justinian, who considered it usury. Nevertheless the maritime loan practice was kept and continued from the ancient epoch to the medieval world⁸⁷.

A typical example of such a loan is mentioned in Demosthenes' speeches:

Two merchants who lived in Athens—Khrissip with his brother and Formion—were going to send a ship for the purchase of goods. Khrissip and his brother gave 20 minas for this purpose. The ship belonged to Dion and its captain was Lampis, Dion's former slave. The following are the loan conditions: Formion pays the interest in the volume of 6 minas (33.3%) for the travel term. For the loan security, he should load the ship in Athens with goods, the value of which shall be twice as much as the received loan amount (these goods are the lien). Otherwise he should pay to Khrissip the 5-minas penalty. Two options of the debt discharge are provided: 1) Formion, having sold the goods in Bosphorus, again loads the vessel, returns to Athens, and repays the debt to Khrissip; 2) In case Formion does not want to take new goods, he should pay the capital with the interest to the ship captain Lampis in Bosphorus so that he could pass the money to Khrissip. The creditors (Khrissip and his brother) bear all the navigation risk. In case of the ship wreckage, their money will be lost. The agreement was constituted in two copies, one of which is transferred for keeping to Kittos trapezits⁸⁸.

In ancient Greece, the maritime loan had several functions—it was a method of money transfer, credit, and a way of insurance against the unforeseen circumstances of sea travel (it entitled the debtor to keep the borrowed money as indemnification for the goods lost due to the ship wreckage). For these reasons, it was wide-spread not only in ancient Greece, but also throughout Roman Empire, where it was called *foenus nauticum* and the borrowed sum—*pecunia traectitia*⁸⁹.

In order to prevent the infringement of the contract terms and conditions, the creditor was compelled to establish contacts with the persons, who lived in the ship's destination place and who could supervise the debtors' activity, in particular to hand over letters with the contract terms and conditions to the debtors. Such practices did not always take effect, because letters were transferred through the sent ship captain, who (intentionally or inadvertently) could not to submit them to the addressee. It caused great inconveniences and frequently made creditors travel themselves, dispatch slave-envoys, or hire special agents.

Is it possible to consider the maritime loan as prototype of bill of exchange operations proceeding from the fact that it provided for money transfer to another

place and payment in another currency? In our opinion, these loans can be compared with prototypes of bill of exchange operations only conditionally: some similarity was only in cases of money transfer from one place to another. Another credit form implied granting a required sum to a certain person with his obligation to pay this amount in another place in the coin which was used there. Such instruction and guaranteed payment credit documents provided to travelers convinced M. Weber that bills of exchange (though not in the present form) and other means of payment, resembling a modern cheque, were used in ancient Greece⁹⁰.

The most popular was a simple credit, which had two purposes: 1) a loan, when the repaid amount should be more than the borrowed one (the interest for the capital utilization); 2) a coin exchange, when the repaid amount was smaller than the borrowed one (the interest was retained by the mediator).

The difference between the maritime loan and the simple loan is seen in the debt document formulations. The marine loan had a compulsory provision, in compliance with which the debt obligation became effective only when the ship reached its destination (in the Roman time debt documents it was called *ad risicum maris, sana eunta navi, salva navi*). There was no such provision in the simple debt loan and payment was obligatory in any case (*salvum in terra*)⁹¹.

In ancient Greece, credit operations were conducted by trapezits, often mentioned in the speeches, attributed to Demosthenes. The term "trapezit" originates from the Greek word "*trapeza*", which meant a small table or a special board on which a trapezit made his financial transactions. First trapezits were engaged only in the coin exchange, but then started to take deposits and give loans at interest, thus getting profit, which sometimes reached 100%.

The first trapezits appeared in V-IV century B.C. (a name is known of Thilostefan trapezit to whom Themistokle transferred for keeping 70 talents in Corinth)⁹², and their activity was the largest in Athens. Its favorable geographical position for commodity exchange accounted for the meeting of representatives of different Greek cities there.

Trapezits' activity, as trade in general, was not much favored in ancient Greece. Therefore, mainly foreigners or enfranchised slaves, for example, Pasion—Arkhestrat's former slave, working in his banking office, became trapezits. From the known Athenian trapezits, only two were Athenians, fourteen—foreigners, eleven—enfranchised slaves and one—the son of the enfranchised slave⁹³. As to Pasion, his loan services, rendered to the Athenian state not only made him a significant capital of 50 talents (though the volume of Pasion's capital is disputable. Different authors evaluate it from 40 to 70 talents and R. Bogaert estimates it at 74 talents with account of the real

estate⁹⁴), but also allowed him to have an open credit in all trade cities of ancient Greece. Pasion received the Athenian citizen's rights and died in 370, being not only rich, but also respectable⁹⁵.

Pasion's history is a bright illustration of the development of the ancient Greek banking system during three generations and also of the types of credit operations, conducted at that time in Athens. However, from Demosthenes' speeches it became clear that Pasion's banking office was a rare phenomenon in Greece, and it should not be considered that the activity scope of other Athenian trapezits (Sokles, Sokrates, Kittos, Geraklid, Pilad, Demomel, Teokle, etc.) was the same as his. Apparently these trapezits were primarily engaged in the traditional exchange of money, and credit agreements were concluded only incidentally.

It is not known whether trapezits paid interest on deposits, but most researchers (referring to the activity of Roman money changers) think that such interest was also paid in ancient Greece. The interest rate was not determined by law and consequently it could change: the lowest rate being 10%, the highest one, 36%. R. Bogaert convincingly proved that deposits in ancient Greek banks and Pasion's bank were investments and intended for receiving interest.

After analyzing the bank credit character in ancient Greece, R. Bogaert concluded that this credit was consumer and not industrial (he did not agree on this issue with V. Thompson, who believed that industrial credits prevailed over consumer ones)⁹⁶. Interest-bearing loans were granted on security of movable and immovable property, land, houses, slaves, goods, and ships. It is known that trapezits kept trade books which had different names—*hypomnemata*, *ephemerides*, *grammata*, in which debts were transferred from account to account. Evidently, the concept *diagraphen*—to rewrite debts—originates from them.

As for real estate loans, Athenians usually took credit for meeting their non-industrial borrowing requirement, or to pay taxes and not invest money in profitable business for increasing their wealth⁹⁷. Most citizens of Polis (the city-state) invested money gained from crafts or trade in land purchase (though it was less profitable than trade), because landholding was socially prestigious. This tradition hindered commercial credit development and limited the credit-money activity of non-polis citizens: they could not borrow money on pledge of the real property. The Greek polis structure itself did not promote general economic development and impeded credit relations, therefore it is no wonder that (as we already mentioned) the majority of Athenian trapezits, engaged in credit operations, were not citizens of Athens.

These restrictions should not misjudge general credit operation progress in Athens in IV century B.C., which is confirmed by numerous references to trapezits and interest-bearing loans—a source of wealth of the rich Athenians. Though many loans were non-industrial (ransom, daughter's portion, etc.), there are some records about their use for productive activity, for example, for the development of Lavrion's silver mines.

There is a debate as to whether trapezits used financial tools, which could be compared with bills of exchange. There are arguments supporting Ch. Letourneau's assertion that bills of exchange were known in Greece and Mesopotamia, and demand notes issued by trapezits in Athens were circulated as bills of exchange⁹⁸.

For the sake of illustration let us consider Stratokle's history, described by Isocrat:

When a foreigner applied to Stratokal (departing to the Bosphorus kingdom, situated on the Black Sea Coast) to lend a certain amount of money, Pasion granted surety for him, offering to Stratokle to receive this sum from the Bosphorus governor, the father of his debtor.

For this purpose Stratokle gave a letter to the debtor's father with a request to pay the money to him. This situation was risky because the debtor's father could refuse to pay and the foreigner-borrower could have already left Athens, making the money return nearly impossible.

Hence why Pasion acted as guarantor and undertook to pay the specified amount with interest.

In this case, Pasion's consent was motivated by the fact that this foreigner brought grain to Athens, putting his money in the possession of Pasion without witnesses, because witnesses were not required at the conclusion of agreements with trapezits. When the same foreigner later accused Pasion, he did not present any documents. It shows that most likely, no debt documents were issued and a money-transfer record was made in trapezit's accounting books⁹⁹.

There is no reason to consider this usual payment request letter as a bill of exchange, because such documents have more in common with the letter of credit. There were no order payments, cessions, or bearer papers in Demosthenes's period, as was correctly noted by L. Goldschmidt at the end of XIX century. Thus legal instruments only vaguely resembling medieval European bills of exchange were available in ancient Greece in IV century B.C.¹⁰⁰. It is hard to agree with Macleod's assertion that "Athenian bankers were the first to invent a method of discount, which assumed profit retention at loan granting"¹⁰¹.

At the end of III—the beginning of II century B.C. credit operations became more complicated. The inscriptions dating to 223-170 B.C., which were found in Orkhomenos (Boeotia), provide the following sample of the bearer document:

Nikareta from Fespiya was the creditor of the Orkhomenos city. The city treasurer transferred money to the Fespiya's trapezit Pistockle in the name of Nikareta. It was stated in the debt document that another person could present it, i.e., it was a bearer debt note. But Nikareta failed to receive at once the sums transferred to her by the Orkhomenos city and the process continued for about three years. In the presence of witnesses, Nikareta filed a delayed payment protest. After only five protests, a new agreement was concluded according to which three ptolemarkhs (city chiefs), the city treasurer, and ten citizens in the presence of seven witnesses were responsible for the debt settlement. When this obligation was not executed in time, Nikareta personally arrived in Orkhomenos and presented the protest to the debtors. As ptolemarkhs were among the latter, they ruled to call the public assembly within a month and meet Nikareta's demand using all city profit for this purpose. Nevertheless, this term was also defaulted and only afterwards the treasurer Pollukritios in the presence of the ptolemarkh Afanador transferred money to Nikareta through the banker Pistockle¹⁰².

The documents dating to II century B.C. from the city of Areksina on the island Amorgos have a debt obligation issued to Praksis from the Naxos city:

Praksis borrowed 3 talents. The note states that the creditor has the right to demand his money through the agency of the third party and that payment is to be made in Naxos to the creditor or to his ordered person¹⁰³.

Other documents found in the same place are orders and obligations to pay to the bearer. A debt could be collected by the third party and not by the creditor himself—an evidence of transfers of debt obligations—an essentially new phenomenon, demonstrating the first features of the modern *weksel*. However, further steps in this direction were not made in ancient Greece. There is no basis to state that such practice was widespread, because at that time such written orders were not trusted. Demosthenes's words speak for it: "Is there such a fool who would make payment to a person other than the creditor on the basis of only a letter and for the amount specified in this letter?"¹⁰⁴.

Though credit letters with payment demand to the banker were used in ancient Greece, it is not enough to assert the *weksel*'s existence. Trapezits' credit operations should be considered only as prototypes of West European *weksel* operations. This particular time period generated such financial tools as chirographs and syngraphs (we will further consider them in more detail), borrowed from Greece by the Romans¹⁰⁵.

Commercial credit practice was further developed in Hellenistic Egypt in III century B.C., when this country was part of the empire created by Alexander Macedonian. It was brought about by the merge of old local traditions with methods of ancient Greek trapezits.

In addition to private bankers, there were prototypes of state financial establishments in Hellenistic Egypt and each province (nom) had its establishment (*trapesa basiliki*) supervised by the tsarist officer, responsible for contract payments¹⁰⁶.

The written payment order and check payment became important payment innovations. There are plenty of papyrus bank documents to this effect. In I century B.C., check payments were wide-spread. At that time, the Greek terms "diagraph" (a message to the receiver about money availability) and "gipograph" (a check or a written order to the banker to pay money) started to be used.

In 1973, the library of the State University of Florida acquired 24 papyrus bank documents dated 87-84 years B.C. They have a standard form and relate to payment orders of the Gerakleopolsky bank division:

*"Ptolemy, the son of Khestiey, greets the banker Protark. Please, pay to Epiteuks
500 (five hundred) drachmas in copper.
Farmout 26, 31-st year"¹⁰⁷.*

Diagraph was a document, issued by the bank, which certified that a certain person made payment on behalf of one of its clients in favour of the third party. This document was specific because it was constituted not only as proof of payment, but also as a contract and thus was equal to the notarial act.

As modern checks were initially called borrowing notes to which receipts were issued (check prototypes), gipographs can also be considered as receipts, which were sent to the bank and had the borrowing note function. The distribution of such written orders in Egypt was caused mostly by heavy copper ingots, being in circulation as payment means. Thus the gipograph (the borrowing note written on the papyrus) became the substitute for money.

As a whole, financial-credit operations reached the highest level, despite the fact that they were state controlled (and to a certain extent limited) in Egypt during the reign of the Greek dynasty of Ptolemies.

The credit activity of ancient Greek trapezits was gradually formed. They granted interest-bearing loans, kept registration books, and rewrote debt accounts. Some trapezits (for example Pasion) accumulated large sums of money and became ancient Greek bankers. Trapezits' activity was connected with the marine loan institution, by means of which money was transmitted from one place to another. In this sense it can be considered as a vague prototype of weksel operations. More complicated forms of written debt obligations are found in Greek inscriptions of the Hellenistic period (bearer documents, payment orders, etc.) and also among papyrus documents in Hellenistic Egypt (diagraphs and gipographs).

1.3.2. Credit operations in ancient Rome

Ways and methods of credit operations in the Roman Empire were borrowed from Greece and its colonies. The first records about the existence of financial institutions in ancient Rome date to IV-III century B.C. and mostly the Greeks were engaged in financial-credit activity there. In general commodity-money circulation and consequently credit financial tools were much more developed in the Roman state than in Greece.

In fact, it was due to the unity of the huge territory included in the Roman Empire. The navigation safety, provided by the Roman fleet, high-quality roads laid for military purposes, Roman state's non-involvement in private trade agreements, and finally vast sales markets in Rome controlled Gallia, Spain, and Danube provinces; all this created favorable conditions for active commodity-money circulation.

However, some authors expressed an opinion not to overestimate the Roman trade development. Good roads constructed for military purposes and the other above mentioned circumstances do not mean that in ancient Rome, trade was very significant. The main trade was for luxuries (spices, silk and other goods imported primarily from the East), the consumers of which were a small portion of the Roman aristocracy¹⁰⁸.

Nevertheless, there were many wealthy citizens in Rome, especially in II century B.C. They (unlike the early Empire period) were not simple landlords, but important persons, who actively participated in the political life of their cities and provinces¹⁰⁹.

In ancient Rome, coins of different monetary systems were in circulation. Permanent cash shortages required cashless payments, among which credit operations played an important role. As a rule, credit agreements were concluded for a month and interest collection was allowed at the rate of 1% per month. A high volume of offers later decreased this interest to 4% a year. Mainly members of the aristocracy took loans.

The majority of the rich Romans willingly participated in credit operations, lending money through the front party. Brute and Seneca are known to do the same in Britain. In order to avoid usury prohibition law, the debt obligation was issued for the amount which exceeded an actually received sum. In the days of the republic, usurious operations could cost Roman citizens their reputations. Usually persons, wishing to gain profit by granting interest-bearing loans entrusted these operations to the banker (*argentaria*) or money changer (*nummularia*), who professionally fulfilled them. In fact, *argentarii* were engaged in credit activity and *nummularii* dealt with checking coins for their authenticity (*probatio nummorum*), from which their name originated (from the Latin *nummus*—a silver coin)¹¹⁰.

In this context, *mensaria* should be recollected (from the Latin *mensa*—a table). Opinions differed about their functions. Some people named them money changers (similar to Greek *trapezits*), others—civil servants, assigned to control the relations between debtors and creditors. In the opinion of the third persons, they granted

credits from public funds to those who were in difficulty caused by high interest debt payments¹¹¹.

Argentarii, first mentioned in IV-III centuries B.C. (though K. M. Smirnov thinks that argentarii appeared in the beginning of V century B.C.)¹¹², were mainly money changers. Their offices were located in markets, where they changed coins, took deposits and granted loans at interest. Argentarii worked in *tabernae argentariae*—"shops" for money exchange. Credits were provided by the so-called *coactor argentarius*. Argentarii's activity was supervised by the government, and they kept three accounting books. The first of them was the main record book, in the second deposits were recorded, and the third resembled the registration journal. Laconic mentions of argentarii's activity in the orations of Cicero and Plaut's comedies allow making a conclusion of practiced non-cash payments by means of transferring records in accounting books or using payment documents similar to checks¹¹³.

Credit financial tools used in ancient Rome were mainly written payment orders and simple acknowledgments of debt (*cautio*), in which a certain person acknowledged his debt to another person and undertook an obligation to settle it. Sometimes the debt origin reasons were specified in acknowledgments of debt¹¹⁴. It should be taken into account that verbal debt obligations without any written documents were characteristic for early Roman law¹¹⁵.

As the Roman state territories expanded, so did the number of private affairs of the Roman citizens. These affairs assumed concluding agreements with respective payments and obligation discharge actually in the absence of their participants. The Roman representation institute was formed, and wealthy Romans were willing to conduct their affairs through argentarii with whom they kept their money. Instead of giving the required amount to the debtor in person, the creditor entrusted an argentaria with it and through him the debtor returned his debt. Such practice promoted the territorial expansion of the sphere of private money operations and simplified clearing.

Stipulation became wide-spread in ancient Rome. Through this operation, the future creditor (in the presence of witnesses) asked the debtor a question about his intentions to repay the debt. The debtor then mentioned the amount of the debt. The stipulation did not require stating the reason for the debt, and unscrupulous creditors often took advantage of that.

In the days of Gaius and Ulpianus, written business agreements appeared. Even though these documents were externally similar to the *weksel*, they essentially differed from it because of the requirement to prove the debt obligation, which was envisaged by the Roman law¹¹⁶.

Written debt obligations did not become wide-spread in Rome (which is explained by the stipulation advantages), though literal contracts (the Latin *litterae*—a letter) were used for registering the transfer of the creditor's loan amount to the debtor. They represented written debt agreements, and appeared in the Roman law in III-II centuries B.C. for making records in the cash receipts and payments book. The record

of a certain sum (paid to the debtor) in the creditor's book corresponded to the record of the same sum (received from the creditor) in the debtor's book. Though the registration order is not known, it may be assumed that the creditor made records on the "Expenses" page and the debtor—on the "Profit" page. However, literal contracts were not very popular because the Roman state population was mostly illiterate¹¹⁷. In addition, they did not protect the debtor against the creditor's abuses. Hence the introduction of simpler literal contracts, which were derived from Greek syngraphs (*syngrapha*—a written document) made on behalf of the third person: "*A person (the name) owes to a person (the name) a sum . . .*"

Syngraphs reflected lending a certain amount with interest, recorded in the written document. It was constituted in two copies in the presence of witnesses who signed it after the debtor.

Syngraphs were inconvenient because their drawing up was too formal (it required not only the presence of witnesses, but also their informing of the agreement contents by the parties involved). They were replaced by chirographs, made on behalf of the first person: "*I, (the debtor's name) owe to (the creditor's name) a sum.*" They were signed by the debtor without witnesses. There was also an IOU, or a receipt, called *apocha* (*apocha*)¹¹⁸. In S. A. Muromtsev's opinion, chirographs were borrowed in Egypt and distributed in Rome in the days of Cicero. It was the debtor's signature that made this document legal¹¹⁹.

Though the concept of the chirograph gradually changed, the autographic document remained the legal basis for the debt obligation acknowledgement. The high level of trust to this document was accepted by the Emperor Konstantin in the years 321-327 AD, but there is no proof that such documents were used for money transfer¹²⁰. The use of contract forms such as the syngraph and chirograph did not guarantee creditors' honesty. Frequently, agreements were made without actual money transfer to the debtor. However, the written obligation already existed and imposed respective duties—the debtor had to repay a paper debt. Literal contracts were replaced by real contracts which became valid only at the moment of the actual transfer of money or other things, otherwise the agreement was invalid. The loan agreement (*mutuum*) also related to real contracts, under which the money-lender passed into the debtor's ownership a certain sum of money or things that the debtor should return or pay back.

Generally, the use of written legal obligations were more characteristic of Greece, although in Rome they slowly came into practice, mainly because the classical Roman law paid little attention to them¹²¹.

A special interest-bearing loan was used when the creditor granted a delay in the return demand with regard to future unknown events. In this case, the creditor negotiated for a higher interest rate as compensation for the increased risk. It relates the marine loan—the creditor could return his money only under the condition that the ship with the goods reached the destination¹²².

The practice of using syngraphs and chirographs shows some similarity with *weksel* operations. In particular, the wording “*or to the one to whom he can order . . .*” is similar to the known *weksel* formulation of the order. This formula appears in lease agreements already in II century B.C. (Caton the senior mentioned it in his agriculture treatise) and though there is no reliable information of its use in written debt obligations, K. Frendt tried to draw a parallel between the *weksel* origin and payment orders in his theory.

The prototype of *weksel* operations can be much more compared with the institution *receptum argentarii*—a special agreement with the banker, according to which the bank’s client ordered the banker to pay a certain sum to the third party on his account. By virtue of this obligation, the client could repay his debt in another place without personal presence, using the institution of representation. The classical Roman law provided that this kind of responsibility could be extended not only over money, but also over all other property obligations. The *argentaria*, who received (*recipit*) such offers, became the third party’s direct debtor. His obligation was an abstract one (in this respect resembling the *weksel* obligation abstractedness) regardless of the availability of the client’s money with the banker or other circumstances. A special claim—*actio recepticia* was stipulated for the *receptum argentarii* agreement collection¹²³. If the money was not received, the third party had the right to put forward a claim against the bank’s client, and the client had the right to the recourse action against the banker, who had violated the deal’s provisions.

The institution *permutatio pecuniae*, money transfer through *argentarii*, also existed in ancient Rome. A. A. Goldenveyzer compares it with the bill of exchange¹²⁴. Such operations were intended mainly for money transfer from one place to another without cash transportation; they were used by officials who collected taxes in provinces for their subsequent transfer to Rome. However, as the senate allocated means to the administration of provinces for the army’s support, it was required to transport them in the opposite direction, from Rome to the provinces. In this case, the institute *permutatio pecuniae* was used, which avoided cash transportation. Eventually, mutual payments between Rome and the provinces again became traditional—by cash transportation.

Different authors often refer to Cicero’s letter to Attica, in which he asks whether he could transfer money to his son in Athens by *permutatio pecuniae*, in order to confirm the prevalence of the money transfer institution¹²⁵. This example is not convincing, because the well-run system of money transfer from one city to another does not presuppose such a question.

Did this institution relate to *weksel* operations? W. Endemann, who was critical to the tendency of considering the Roman law as a source of all later concepts (including the *weksel*), emphasized that though bills of exchange and money transfer documents indeed had some similarity, it is not the basis for their identification. Other historical reasons were required for the appearance of the classical *weksel* type¹²⁶. As was noted

by D. I. Meyer, money transfer was not yet a *weksel* operation. Though it may be assumed that in fact the Romans were familiar with money transfer, the ancient Roman literature records do not directly testify that the point in Cicero's letter demonstrates a typical and wide-spread transfer operation¹²⁷.

We agree with S. M. Barats's opinion that in the Roman Empire, money transfer had nothing in common with the *weksel*. S. M. Barats thought that the *weksel* institution did not exist in the Roman state, despite a comprehensive legal regulation of its public life. This is because the Romans were not a trading nation, due to the fact that trade and money operations were disgraceful for free Roman citizens¹²⁸. The same opinion was shared by W. Holdsworth¹²⁹.

I. Rostovtsev's stance is fundamentally different. According to him, during III century B.C. an economic and political crisis, affecting money operations, aggravated the Roman Empire. Increased prices resulted in wage instability. Around 209 B.C. during the rule of Septimij of the North, the Milasa city in Kariya decided to protect bankers (who were the city's concessioners) from the illegal "*weksel*" circulation, which was to the detriment of not only the bankers, but also the entire population. In the document, which M. I. Rostovtsev quotes, its citizens complained of the "*weksel*" speculation in the market, which hampered the required city supply and caused the community to stay in poverty. It resulted in the delay of tax payment to the emperor¹³⁰. We do not know what concept was used in the original, quoted by the author—*syngraph*, *chirograph* or other kind of debt documents, and why these documents are called bills of exchange. It is an unjustified modernization of ancient Roman credit tools.

Since III century B.C., the intricate and refined socio-economic system of the ancient World began to deteriorate. The economic activity became simpler and based mainly on the supportive production, the cities gradually disappeared. After the German intrusion in 476, Rome fell. It affected the financial system of VI-X centuries. The bankers of the ancient world completely disappeared due to the reduced trade, cities' impoverishment, and the state interest regulation. In the early part of the Middle Ages, money changers still existed (there are 522 and 557 dated inscriptions in which *argentarii* are mentioned), but there is no evidence of their activity in later periods¹³¹.

In order to find out whether Roman credit operations influenced the appearance of the West European *weksel* of the Italian type in XII century, we shall dwell on the specific features of the ancient Roman economy. Its simple commodity manufacture did not presuppose the acceleration of capital circulation. The "sell more and buy less" tendency characteristic of the ancient economy as a whole was attributable to the ancient Greek autarchy (self-sufficiency), which did not promote social division of labor and development of commodity-money relations¹³².

Z. Kallju pointed out that the fact that money circulation was developed in ancient Rome does not mean that the ancient Roman economy was based on money relations. The concept “capital” was unknown in Rome, where rich people were more likely to spend their money than to receive profit from it. If it was required to gain profit, the ground rent and usury (not trade and industrial development) were used in the Roman society for this purpose¹³³.

Though it is quite possible to compare ancient financial tools and the same tools of medieval Europe, it is expedient to speak only about the appearance of the vague prototypes of later period financial tools, including weksels, in the ancient World. As was noted by M. I. Rostovtsev, not only did the ancient economy forms not complete the European economic development¹³⁴, but as a whole (as will be seen further) this development was not the continuation of the economic history of the ancient World, because the appearance and the growth of the European economic space was determined by other historical factors.

Though there is a widespread viewpoint that the first weksel operations were used in the ancient world, the West European weksel (as financial tool with definite and specific features) appeared in medieval Italian trade cities, where the ancient experience of using written debt obligations turned out to be in favorable socio-economic conditions of the Apennines peninsula¹³⁵.

During ancient times, financial operations virtually remained at the usurious level, because trade was carried out mainly in one stage, when one and the same merchant bought the goods and sold them to the consumer. Such practices did not require commercial credit development. In ancient states (especially in the Roman Empire), trade routes were not risky and merchants could safely transport cash. Therefore, it was not required to invent such a money substitute as a weksel. Proceeding from this, M. Barats stated that the weksel appeared and developed without any influence of Roman legal doctrines—it was created by medieval merchants, who knew nothing about the Roman law and wished to have a convenient financial tool¹³⁶.

Quite often, trade development, wealth, and a variety of trade companies of Rome served the basis for drawing a parallel between the ancient Roman economy and the economy of capitalism. But the independent development of commercial and usurious capital, which is not invested in manufacturing in this case, testifies only about society's insufficient economic development¹³⁷. It accounted for usury's significance in the Roman Empire¹³⁸.

Ancient world debt obligations, including syngraphs and chirographs, can be deemed only vague prototypes of the weksel. We can not directly relate the practice of using the above mentioned ancient financial tools and similar medieval tools.

V. Durant believes that ancient Greece borrowed methods of trapezits' activity in the Middle East, improved them, and then conveyed them to Rome, which, in its turn,

transferred these methods to Europe¹³⁹. Today it is difficult to determine how much medieval Italian money changers used the experience of ancient Greek trapezits and ancient Roman argentarii. Most likely, with the collapse of the Roman Empire, the experience of financial-credit operations was lost. We can speak about the historical gap between commercial (and financial-credit) activity in the cities of northern Italy and the traditions of the ancient Roman trade.

The territorial vicinity of Rome and Venice (or Genoa) does not mean a continuity of traditions, which is demonstrated by the following illustrative fact: even the works of ancient authors (in particular of Aristotle) became known to Europe of XI-XII centuries. Such a break with the traditions was partially caused by the Christian church, which was pursued in the Roman Empire for centuries. When Rome fell, the church rejected its cultural heritage as pagan and uncongenial to Christian Europe.

The assertion that the West European *weksel* was a direct consequence of the development of credit operations in the ancient World seems quite logical at first sight. However, it is not true. The experience of financial-credit operations in ancient Babylon or Egypt had some influence on their development in Greece, which was further used in Rome. Much more important was that credit operations (and the first *weksel* prototypes) appeared in different places and at various times independently from each other on the basis of real trade requirements¹⁴⁰. An idea that the *weksel* development history continued from the ancient world to Italian cities of XII century is mainly attributable to the general approach to the uninterrupted civilization development from ancient Rome to medieval Europe.

Historians of the French school (A. Pirenne and M. Block in the beginning of XX century, Z. Dubi in the second half of XX century) adhered to the concept of smooth transition from ancient to medieval centuries, believing that the Roman Empire's disintegration did not result in the complete change of civilization. According to O. Shpengler, the ancient and West European civilizations fundamentally differ by their essence. After the Roman Empire collapsed, the antique civilization already ceased to exist and the European civilization arose. In his opinion, the antique civilization was closed in itself whereas the West European civilization tended to expand, which resulted in the creation of colonial empires. A. Toinbi's concept is more contemporary and adequate. According to it, the West European civilization is not integral with the antique civilization; it is only its heiress¹⁴¹.

Thus it can be concluded that after the disintegration of the Roman Empire, a historical gap was formed in the development of commercial credit tools (including prototypes of *weksel* operations). There is no ground for speaking about the *weksel*'s continuous history from the ancient world to medieval Europe. As was correctly noted by Y. V. Sokolov, the experience of the account of financial-credit operations (and we shall add the experience of these operations themselves) in ancient Rome disappeared together with the Roman Empire's culture; medieval monasteries could not continue this tradition¹⁴². The time came for the long period of decline and

cultural isolation of Europe, especially obvious against the prosperity of the Islamic countries and Byzantium, to which the center of cultural and economic life moved for many centuries.

Not only syngraphs and chirographs can be considered as prototypes of *weksel* operations in ancient Rome, but also the contract *receptum argentarii*, in compliance with which the *argentaria*'s client ordered to pay a specified sum to a third party on his account, including in another place. An operation *permutatio pecuniae* was also connected with money transfer, but it was not long used.

Despite some similarity of the ancient world's credit operations with later *weksel* operations in Italy and other countries of Western Europe, we can speak only about vague *weksel* prototypes in the ancient period. The antique economy of slaveowning states was not focused on production development or profit gain, therefore credit operations remained at the usurious level.

1.4

Appearance of Financial Tools Similar to the Wechsel in China

ACCORDING TO F. Brodel's (1902-1986) felicitous remark "the world—the economy"—an integral economic space, separated from other economic "worlds" geographically or in time, it is possible to state that such economic spaces existed since ancient times, being structured around certain cultures and civilizations. In the ancient world, Phoenicia, Carthago, Ancient Greece, and the Roman Empire were such economic landscapes with existing trade relations and routes. The Muslim civilization represented a separate economic world from XI century¹⁴³. China was a special "world-economy". Its sphere of influence covered a huge territory from Central Asia to Japan, Indonesia, and the southern seas.

First of all, it is necessary to underline some specific features of money circulation in China. As Li Gou pointed out in his treatise "About state management" (XI century) at first the money function was performed by precious stones, gold, and silver. Due to the high cost, they were inconvenient for small calculations, and coins (Chinese tsyans) were introduced¹⁴⁴.

They were manufactured not from precious metals but from copper (later in the days of Sun's dynasty—from iron). And not one 3.5-gram tsyan was a monetary unit but a bundle of 1000 coins, which accordingly weighed 3.5 kg. Exact calculations were carried out by taking out a certain quantity of coins from the bundle, especially in small commercial operations¹⁴⁵.

However, the main inconvenience of such bundles was their weight, which considerably complicated the transportation of large sums. For example, the transportation of 10 thousand bundles of copper tsyans required 2690 bundles to be paid for transportation, more than 25% of the amount of the transported sum¹⁴⁶.

Different peoples encountered this problem, and, as a rule, with the growth of their wealth, more noble metals replaced less noble ones: copper was substituted by silver and silver—by gold. Due to the traditional character of the Chinese society, which appreciated the observance of established customs, copper was considered a unique metal, the cost of which was constant. Therefore, heavy copper coins were used during two millennia in China, though their transportation always caused problems¹⁴⁷.

In VIII century, commodity-money relations actively developed and shopping centers increased during the second period of Tang's dynasty (618-907), the most powerful medieval Chinese dynasty. The period of China's territorial expansion began, and its borders extended from Bukhara in the west to the sea coast in the east. The Tan state became a true world Empire, which supervised half of Silk Road, and the strong state power provided economic growth and trade development.

Tan state's trade contacts covered all Asia and reached Byzantium and Syria. 200 shopping streets were in Chanan—the largest trade center. Chinese ships visited India, Persia, the Arab Caliphate, Japan, and Korea. These ships (which at that time accommodated up to 600-700 people) brought many foreign merchants, mainly from Persia and the Arab Caliphate, to the main port of Kwangchow. Their number totaled 120-200 thousand persons. Chinese ships gradually forced Indian and Persian vessels out of the international trade routes of the southern seas¹⁴⁸.

Professional merchants (*shanke* or *guke*) and trading groups (*didyan*) appeared; usury developed and mortgage pawnshops sprang up. These pawnshops used mortgage receipts (*chzhitsyui*) with a pledge deposit requirement, but the merchants who had a guarantee (*tszyui*) could get the credit without it¹⁴⁹. However, the development of commodity-money relations faced two problems. On the one hand, new conditions of economic activity required greater volume of money in circulation; on the other hand, the transportation of large sums became complicated due to the huge weight of copper coin bundles.

As copper coins were not replaced by silver ones in China, this problem was solved by the introduction of paper money substitutes. The paper invention in China and well developed institution of credit relations prepared the Chinese society for the use of securities¹⁵⁰. It was also important that various pawn receipts were in service in China for a long time; they became the first credit documents.

There was another type of Chinese credit establishment, mutual credit unions, which appeared in the beginning of our era at Buddhist monasteries. In the days of the Tang dynasty, these unions served as the basis for mutual aid companies, which lent money. As debt obligations were executed in writing, trust was gradually formed in the Chinese society to the document as a written embodiment of such obligations¹⁵¹. Originally, a debt contract consisted of two parts: one remained at the creditor and the other was received by the debtor. In III century, the contract became a single document and it was kept at the creditor. Initially, these documents were written on wooden plates or silk patches. From II century, paper started to be used.

Difficulties with transporting a large number of copper coins became obvious in the time of the Tang dynasty. It was mainly connected with the rapid development of tea trade¹⁵². Dealers brought tea to Chanan (the northern part of China), where it was in great demand. After the sale of goods, a problem of sending profits home arose. The local authority representatives in remote Chinese regions were obliged to transfer large taxes to the capital. For this purpose, provincial administrations created their representations, the so-called *datszyans*, where money was gradually accumulated for the dispatch to the financial department. In the second half of VIII century, *datszyans* had the name *tszintszouyuan* and their functions changed: from that time merchants who gained profit from trade in tea had to deliver money there. They received a corresponding amount from representatives of the local administration in the provinces. The local authorities solved the problem of transporting large tax sums to the capital. When merchants handed over money to *tszintszouyuan*, they received a special document—*feitsyan* ("flying money"). The document was called this because it provided an easy and long distance "flight" of large amounts of money, which was difficult for the transportation of copper coins¹⁵³. Having left money in *tszintszouyuan*, merchants could safely travel across China, presenting a *feitsyan* for cash receipt. "Flying money" was mainly used by wealthy merchants, who had their trade houses all over the country.

The important historical source, "The Modern History of the Tang dynasty," has a reference to the state and private exchange. This testifies that not only *tszintszouyuan*, but also private persons had the right to issue a *feitsyan*. It expands the circle of possible participants of such operations from tea traders to various trade unions of merchants, who could send money in this manner to any remote part of China¹⁵⁴.

The reasons for the appearance and distribution of *feitsyan* and the West European *weksel* were identical. As 10% of *feitsyan*'s amount (money transfer payment) was charged at its issue, provincial administration representatives received a significant profit to the displeasure of the central authority. The imperial court permitted to write out a *feitsyan* only to the financial department and the department of salt and iron production in order to monopolize this profit. A 100-*tsyan* tax began to be collected from each thousand of coin bundles for restricting local merchants' profit at recalculation.

In 782, when the state treasury ran short of money required for covering military expenses, the emperor decreed to borrow money from rich merchants and usurers—a compulsory withdrawal in practice. In Chanan merchants were deprived of goods, offices, pawnshops, and warehouses; the fourth part of all money and grain in pawnshops was seized. In protest, indignant merchants stopped trade. However, such compulsory loans did not solve the imperial court's problems and resulted only in higher prices and usurious interest¹⁵⁵.

In 807, due to the disturbances in the country, the emperor ordered to place money in the treasury in exchange for a feitsyan¹⁵⁶. In 811, feitsyan was forbidden, which led to the disorder of money circulation and its general crisis. The “flying money” prohibition and unwillingness to use heavy and inconvenient copper coins caused the accumulation of great sums, which were completely withdrawn from circulation. Therefore, in 812, feitsyan was again permitted, but this time under state control. Merchants could hand over money to the state financial department and the same 10% was collected in favor of the state, as was before the 811 prohibition. When merchants became displeased with the interest rate, the government cancelled it, attempting by all means to monopolize this highly profitable financial tool.

Researchers differently estimated feitsyan's essence though it is obvious that their emitters did not intend to increase the volume of circulated money: feitsyan was not a substitute of copper money, but only the means of its transfer, remittance. Some modern writers consider feitsyan as deposit certificates, issued by state offices in exchange for money (this approach is most popular¹⁵⁷), transfer receipts, which did not directly participate in money circulation, or even paper bills of exchange—remittance checks which could be later exchanged for metal money¹⁵⁸.

Though feitsyan's essence and purpose are generally clear, their relation to the modern financial tools is problematic. According to N.V. Ivochkina, feitsyan can be compared with money letters of credit, in particular with travel letters of credit¹⁵⁹. It should be noted that Chinese financial tools do not have direct analogues with West European ones: they appeared in the conditions of another culture with different economic traditions.

The beginning of the Sun dynasty's (970-1278) ruling, when wars were forgotten and peace was established in the country, was characterized by production growth and increased commodity-money circulation. In the beginning of XII century the compass was invented and a more perfect sail system was created in Chinese ships, which promoted international sea trade. Cities quickly grew, becoming centers of money circulation. New forms of economic activity appeared¹⁶⁰. China's traditionally large and expanded bureaucratic system, which required payment for officials' work,

also contributed to the development of money circulation. Trade volume increased and in X-XIII centuries, China had extensive trade relations, mainly owing to sea trade. Sun's empire traded with more than 50 countries and imports included up to 200 kinds of goods; the largest world trade centres were Kwangchow and Tsuangchow.

For monopolizing all foreign trade, the state collected great taxes from merchants. An extensive network of customs was created all over the country: sea customs were in 11 ports and duty rates reached 11-13% of the goods' cost. However, merchants got wealthy and usury was distributed. For example, in Khangchow one of influential usurers had tens of credit offices with the total capital of 10 million bundles of coins. The general development of commodity-money relations in the days of the Sun dynasty led to the shift from copper coins to iron ones. 200 billion coins were issued, but the problem of transporting heavy coins remained unsolved.

Feitsyan was also used during the Sun dynasty, though the weakened positions of the central authority considerably reduced the amount of peripheral taxes and respectively decreased the need for feitsyan. At that time, a significant role in the development of credit operations in China was played by private offices—guifans, which spread during the Tang dynasty. Copper money, silver, and gold were accepted for storage in guifan. It was required to pay a certain amount of money for storage, and though guifans made payments on payment orders and checks (signed by persons, whose money had been accepted for storage), they did not give credits and did not use the deposited money for profit¹⁶¹.

Merchants and provincial officials who arrived in the capital had an opportunity to deliver money in guifans and travel without cash, having only receipts with them, against which they could receive their money if necessary. Such practices caused the Chinese government's discontent because it failed to supervise the movement of significant sums. Thus it demanded guarantees that the persons, engaged in such operations, did not have debt obligations¹⁶².

Guifans provided credit documents of two types. The first type of documents stated the guifan's deposited amount and the investor's name; a record was made in the registration book when a credit document was issued. These documents represented depositary receipts which became a means of independent circulation in the days of the Sun dynasty. The second type of documents can be considered a version of the check, billed to guifan by its clients¹⁶³. At first, guifans' receipts were used mainly in big cities, but later they were distributed in other regions of China. As these receipts had private character and were issued by various small businessmen, their exact name is unknown.

In the beginning of the Sun dynasty's ruling, the experience of feitsyans—a transfer instrument in the days of the Tang dynasty and private merchants' debt obligations—continued to be widely used. In 960, merchants were again allowed to

hand over cash in treasury and receive *feitsyan*. This practice was convenient and prevalent. In the period of the Northern Sun dynasty, *feitsyan* received the name *byantsyan*—"convenient money"; they became paper banknotes¹⁶⁴. A special office was set up for issuing "convenient money," required for the normalization of money circulation. Similar establishments appeared in each province.

At that time, another kind of credit paper appeared in the Sichuan province. They were *tszyaotszy* (*sintsyan tszyaotszy*—literally "those which can be exchanged for cash")—receipts issued by local *guifans*, which gradually became an independent circulation means. Henceforth, metal money was most often transferred to *guifans* for receiving *tszyaotszy* for their further use in circulation.

Credit securities gradually became money in China. According to H. Macleod, in 997 the number of circulated debt documents totaled 1,700,000 ounces of silver; in 1021 this sum increased to 2,830,000 ounces and in 1032—up to 5,256,340 ounces. Thus, *tszyaotszy* were very seldom exchanged for metal money. Later, China faced various consequences for the non-convertibility of credit securities¹⁶⁵.

The number of *guifans* rapidly grew. They were private establishments, which sharply competed with each other. The state administration's support played a decisive role in this struggle. Gradually, the issue of *tszyaotszy* credit documents became the main function of *guifans*, called *tszyaotszy pu*—"tszyaotszy shops" in the Sichuan province. In view of *tszyaotszy*'s profitability, the state authority tried to supervise their circulation and set up a *guifans*' association for covering a part of the expenses for the annual collection of taxes in kind.

In the beginning of XI century, a special tax was imposed on the issue of *tszyaotszy*. The "Sixteen Trade Houses" association received a monopoly on the *tszyaotszy* issue in *Ichchow*—the economic and political center of Sichuan province. Thus, an actual control was established over *tszyaotszy* circulation, and significant profits were guaranteed.

The *tszyaotszy* distribution altered the very mechanism of receiving profits by *guifans*. If earlier they collected payment for money or property storage, once *tszyaotszy* became an independent circulation means *guifans* started to charge commission when holders of *tszyaotszy* demanded their exchange for money. Initially, these commission charges varied in different *guifans*, but by degrees *guifans*' association established the uniform amount of commission—30 *vens* for one bundle of coins, which suited both owners and *guifans*' clients. According to the Japanese researcher S. Kato, *tszyaotszy* can be compared with the modern time bearer *weksel*, though regarding this I. V. Ivochkina points out that such similarity only existed when *tszyaotszy* were issued by *guifans*, in which not only money, but also valuables (here an analogy is seen with the *weksel*'s commodity security) could be placed. The *tszyaotszy* commodity security soon disappeared and the *weksel* similarity lessened¹⁶⁶. Therefore, it is impossible to identify *tszyaotszy* and West European *weksels* even though they have some similarity. They were private money credit notes, and each *tszyaotszy* receipt meant a real sum of metal coins transferred to the *guifan*. The important feature of the *tszyaotszy* circulation

was that these money credit notes were secured by real coins: they could be easily exchanged for metal money (which created users' trust in them) and they were freely circulated as a convenient paper payment tool (the tszyaotszy nominal and real cost coincided). As tszyaotszy existed only in the Sichuan province, the state authority did not authorize their circulation, and they were not compulsorily introduced.

Ten years after the issue of tszyaotszy by guifans' association "Sixteen trade houses," the emperor ordered the Sichuan administration to fully control this credit tool. In K. Hino's opinion, the government opposed the increased economic significance of the private association in the remote Sichuan province, which constantly strived for independence. In 1023-1024, the governor of the Sichuan province was Kou Tszyan, an opponent of tszyaotszy. He considered their use as a reason for disorders and problems, when tszyaotszy emitters refused to exchange them for metal money. Proceeding from this, Kou Tszyan forbid the issue of tszyaotszy and closed all office, engaged in similar operations. There were also liquidated registration books, in which money investors were recorded, and tszyaotszy holders were ordered to return them to the emitters and exchange them for metal money. It turned out that the metal money handed over for storage in exchange for tszyaotszy had been partially spent and they were exchanged at a 20-30% discount. Such actions of Sichuan province's governor testify his desire to deprive a private association of the right to operations with securities. The tszyaotszy prohibition led to a decrease of trade, and Kou Tszyan was removed from power. His successor became Bi Tang, an adherent of the introduction of state tszyaotszy in the Sichuan province, which occurred in 1024. He offered to charge commission in the amount of 30 vens for 1,000 coins at the exchange of state tszyaotszy for metal coins¹⁶⁷.

In the second half of XI century, the Sichuan province continued to use tszyaotszy, which functioned mostly as paper money. Attempts to forbid tszyaotszy did not cease, as opponents of metal money paper substitutes believed that their use could break a habitual practice of selling salt, which was delivered as government receipts, and also negatively affected hay supply¹⁶⁸.

Next to Sichuan, the Shensi province issued its own credit tools—tszyaoiin. Details of their use are unknown, but they are considered to have some similarity with the trade *weksel* because a merchant, who sold goods, received not cash, but the debt obligation—tszyaoiin. Payment became deferred and was transferred to another place: the merchant could exchange tszyaoiin for metal money in the capital of his province.

Gradually, functions of tszyaotszy and tszyaoiin expanded and they, like the *weksel*, began to be used for credit drawing under state control. These documents can be considered written debt obligations, which authorized their holder to demand the specified amount at a specified time. In the beginning of XII century, all previously issued paper equivalents of metal money were replaced by paper banknotes *tsyan-in*, which became used in all provinces of China, except Sichuan¹⁶⁹.

During the ruling of Southern Sun (1127-1279) dynasty, the practice of using *tszyaotszy* and *tszyao* further developed. As in the days of the Northern Sun dynasty, *tszyaotszy* were mainly used as depositary receipts; in 1131 the so-called *guantszy* were issued. They were also utilized as depositary receipts and as travel letters of credit. These securities were intended for the government's money transfer to a province, and merchants were allowed to receive cash in the capital. However, some years later, the capital treasury could provide cash for only 60-70% of all *guantszy*.¹⁷⁰

Finally, in 1160, *khueitszy*—the all-state universal paper money—was issued on the basis of the experience of using *tszyaotszy* and *guantszy*. In XII century, several kinds of credit securities existed: *tszyaotszy*, *guantszy*, *khueitszy*, and *tsyan-in*, which were issued by provincial administrations (mainly in the Sichuan province). In 1256, paper banknotes were issued exclusively by the central government. It completed the transformation of credit securities into banknotes. The paper money introduction was a long and uneasy process which was resisted. In 1208, due to the discontent of the population, the government established the paper-metal money percentage for trade agreements and credit operations.

As a whole, the transition from the government's term debt obligations of the days of the Sun and Tsin dynasties to termless ones was due to a general tendency of the evolution of money paper substitutes in China, which meant a compulsory paper money introduction. Severe punishments were stipulated for fake banknotes.¹⁷¹

In Europe, Chinese paper money became known at the end of XIII century from Giljom de Rubruk and Marco Polo, who saw them at the court of Mongolian governors. According to Giljom de Rubruk, palm-size cotton paper scraps were used as money in China.¹⁷² In a separate chapter of Marco Polo's book "Banknotes Issued by the Great Khan," he described in detail the appearance and way of paper money manufacture in the Great Khan's mint in addition to the features of their circulation.¹⁷³ His records long remained the main source of the information about paper money in China.¹⁷⁴

In 1421, the ruling Ming dynasty transferred the capital from Nanking to Peking. This event can be considered a turning-point in the economic history of China, because Nanking, located on the Blue River, had an outlet to the sea and Peking was located in the center of the continent, which resulted in the long self-isolation of the huge empire.¹⁷⁵ The country's development was also impeded by the long economic stagnation: agricultural taxes constantly exceeded 50% of the crop. The self-isolation led to the state's restriction of foreign trade and increased speculative activity. Unlike the time of the Tang and Sun dynasties, any economic innovations in the Chinese society were hampered. The situation was also complicated by the population growth along with the reduction of the gross domestic product.¹⁷⁶ In such conditions, the European colonial expansion began, after which China lost its world power position for a long time.

The invention of paper in II century A.D. was among the preconditions of the paper credit document distribution in China, and also the respect for written documents, which was characteristic of the traditional Chinese culture. Any paper with the written text was carefully stored and only destroyed in the case of absolute necessity¹⁷⁷. The development of credit relations, in particular credit securities, was significantly influenced by the strong state power with the advanced legislation, envisaging, administrative measures towards the debtor. The need to transfer money from provinces to the capital and vice versa was the main precondition of using credit securities (the basis of which paper money appeared in China in XII century).

The economic history of China was unique. The emperor had the right to lay claim to any property in the territory of the state. Consequently, the confiscation of a rich merchant's money or property was considered legal. Therefore, wealthy merchants were not eager to invest their money in manufacturing (which the state could easily control). The study of the Confucian philosophy and calligraphy was the most important in medieval Chinese society with its prevalent system of values. Those who successfully passed examinations in these sciences (during the rule of the Sun dynasty, they were held once three years) occupied high posts in the bureaucratic machinery, which was incompatible with commercial or productive activity. The main source of their profits became corruption and various taxes.

In William Baumol's opinion, such an approach, typical for the history of the Chinese economy, did not create favorable conditions for commercial activity and reminded the bureaucratic economy of ancient Rome. Though the paper and the *weksel* were for the first time invented in China, the distribution of the new forms of financial-credit activity was not promoted by the traditional conservatism of the bureaucratic state machinery. Rich merchants wished to become officials and invested their profits in land¹⁷⁸.

In the traditional Chinese society, where despotism coexisted with the Confucian erudition, the person's social status was determined not by the origin or wealth, but by the successful career development¹⁷⁹. That is why the Chinese inventions, which created preconditions for one of the earliest revolutions in the production, were not actually implemented. The economic progress of China was hindered not by the absence of scientific knowledge or technical skill, but by the restriction of business, individual freedom, and high risk for private business development.

1.5

Weksel Analogues in the Eastern Islamic Countries

WHILE THE MEDITERRANEAN civilizations appeared and developed around sea trade routes, the Islamic civilization formation was promoted by camelcade ways through the desert, which connected the huge territory from the Atlantic up to the Pacific Ocean. Islam united many countries and peoples. Muslim merchants enriched by intermediary operations supervised trade ways of Southern Europe, Northern Africa, most of Asia, and the Far East.

Long ago, the Islamic world knew such kinds of credit tools, as *suftadja* and *hawala*. The modern Russian expert in the field of the Islamic law and Islamic banks L. R. Syukiyajnen believes that the medieval European law was greatly influenced by the Islamic law, whence the *weksel* institution was borrowed. This occurred because the Islamic law of that time significantly surpassed the European one by its detailed elaboration and sophistication, being inferior only to the Roman law¹⁸⁰.

F. Brodel repeatedly came out with the assumption that the West European *weksel* appeared under the influence of loan letters used by Muslim merchants¹⁸¹. Though specialists on the Arabian trade history, in particular E. Ashtor, were critical to this assumption, they did not put forward justified objections.

German lawyers of XIX century began to study credit tools of the Islamic world. Richard Grashoff put forward the most plausible concept of the influence of Muslim merchants on the formation of the West European *weksel*. This issue was considered in his Ph. D thesis, in which he defended in the law faculty of the Kenigsberg University and published in 1899¹⁸². In the end of XIX century, J. Kohler's works covered some aspects of the debt obligation institution in the Islamic law¹⁸³. In the second half of

XX century, a theme of Islamic credit instruments appeared in the works of E. Ashtor, a famous Israeli researcher of the economic history of the Mediterranean and the Near East¹⁸⁴. Ashtor criticized the parallels between suftadja and the West European *weksel*. However when he described bankers' uses of checks (*sakk*) and credit letters (*suftadja*) in the Islamic countries in his book "A Social and Economic History of the Near East in the Middle Ages," published in 1976, nothing is spoken about the similarity between suftadja and the *weksel*¹⁸⁵.

The history of commercial credit tools in the Islamic world is poorly investigated because in XIX century Islamic countries borrowed West European concepts for denoting their commercial operations. Arabian merchants stopped making traditional debt agreements (*binasi-atin*), earlier recorded on a plate (*garida*)¹⁸⁶, but instead granted loans (*credito*). Commercial operations were carried out not in the market (*suk*), but at the stock exchange (*bursa*). Money changers (*sarraff*) were replaced by bankers (*banker*). The concepts, borrowed from the European languages (*kambiala*, *bulisa*), were used for the naming of *weksel* documents¹⁸⁷. The traditions of the Islamic credit instruments were forgotten and replaced by the European *weksel*. This happened because Islamic lawyers, when they legally substantiated the operation of the debt obligation transfer, did not elaborate formal requirements to the rules of such operation implementation (it did not correspond to the traditions of the Islamic law) and to the document which performed the function of the debt obligation transfer. We shall consider in more detail the economic nature of Islamic credit tools.

It is first necessary to dwell on Islam's attitude towards the trade-commercial activity as a whole. Islam appeared in the trade city environment; the prophet Mohammed himself was engaged in trade for some time, and in the Islamic world commercial activity is lawful and does not contradict religious norms. Islam in its initial form (as well as the majority of its later trends) approved an active production and mediation, not condemning business and authorizing the work of not only a peasant or a craftsman, but also of a merchant. Merchants' activity was always esteemed in the Islamic countries as distinct from Christian Europe of XII-XV centuries¹⁸⁸. The Egyptian government's invitation of merchants from Sinda, India, China and Yemen in 1288 was a typical example of such a position: "We invite . . . good and benefit seeking negotiators . . . Everyone who will arrive in our country will be able to live there . . . Let Allah bless the trip of anyone, who induces to a kind action by the loan . . ."¹⁸⁹.

Islam blamed interest-bearing loans (usury, the Arabic "*riba*") referring to the Koran's vividly negative attitude towards them¹⁹⁰. Although the usury problem worried the Muslim world, all Islamic culture, unlike the Christian one, had a commercial character. An expression is attributed to the prophet Muhammad: "If Allah permitted the paradise inhabitants to trade, they would trade in fabrics and spices"¹⁹¹. Owing

to the advanced business partnership system (the first commercial associations, the prototypes of the Italian *commenda*, and *commandite* companies appeared in the Islamic world), Muslim merchants favourably invested their profits for further trade expansion.

While in medieval Europe trade decreased and cities fell into decay, in the large cities of the Arab Caliphate the production level increased, money facilities developed and long-distance trade became more active. In the days of Abassidy's dynasty (750-1258), Arabian ships could be met from the Mediterranean Sea up to the Indo-Malay archipelago and goods from every corner of the world were sold in the markets of the huge Arab state. It was the period of the trade peak prosperity, which was promoted by the territorial expansion of the influence of the Muslim culture and the Arabic language¹⁹².

The majority of the Muslim countries' population lived in the countryside and was engaged in agriculture. As a whole, the Muslim East greatly differed from medieval Europe by the society's social structure, because the Arab Caliphate had many densely-populated cities—the important trade centers.

Muslim merchants used a wide network of both traditional trade routes (ground and sea) and new ones, created by them for own needs. Baghdad—one of the largest and richest cities of the world of that time became the center of this extensive network. The attitude to trade and merchants is embodied in the romantic image of Sindbad-seaman, "whose soul aspired to wander in different countries and trade there"¹⁹³.

Trade activation was promoted by fast development of cities in which commerce was concentrated in well-organized markets (the word "market" is of the Persian origin and is synonymous to the Arabic "suk"—a place for trade). Professional usurers, or *sarrafs*, dealt with money operations (money exchange and loan granting) in the markets of the Muslim world cities. As *Sheriyat* laws, which established the rules of life for devout Muslims, condemned the usurious activity, mainly Jews were engaged in loans and money exchange. In the Muslim world of Abassidy's period they were unable not only to achieve much success in trade, but also to take up high state posts.

Jews played an important role in trade operations of Muslim merchants. They were negotiators from the Rhone valley, who carried out financial and trade operations from Western Europe up to Byzantium, Egypt, India and China. The main goods in these operations were spices and medicines for the advanced Muslim remedies. The significance of Jewish merchants and bankers increased in the Fatimid Caliphate during the ruling of the vizier Ibn Killis, a Jew by birth (975-996). Christians

who lived in the Muslim countries (Syrian yakovits, nestorians, kopts, Armenians) supervised financial-credit operations in the internal trade. Having large sums of money at their disposal, they performed the role of creditors in Egypt, Syria, Iraq, Iran, Central Asia and Armenia. Armenians' financial-commercial operations were very active. Armenians were mediators between the Muslim world and Byzantium, especially in the center of the Black Sea trade, as Trebizond (Trabzon).

The Arabs supervised the Mediterranean Sea basin, which became not only the border between two civilizations, but also the most important center of trade routes, along which exotic goods, as well as new ideas and knowledge got to Europe from the East. Arabian ships often entered South Italy's ports and in X century, Italian merchants from the Amalfi city visited Cairo, Jerusalem and other cities of the Arab East.

Credit operations and their profitability were promoted by different commodity prices in various Caliphate parts and also by a lot of cash in gold and silver coins, which naturally stimulated their favourable investment. Usually bankers were used for these purposes. It is necessary to take into account the circumstance of coin quality deterioration between X-XI centuries¹⁹⁴, which contributed to searching for non-cash forms of settlement and credit.

Banking business quickly developed in the Arab countries and large sums of money were paid in the form of checks (*sakk*), were guaranteed by bonds (*khatt*) and were safely transferred by letters of credit—*suftadja* (*suftadja*) to distant countries¹⁹⁵. In Basra, a well-known port city, banking business was so developed that each merchant an account with a banker and paid for goods only with checks issued to his banker's name (*khatt-i-sarrafa*)¹⁹⁶.

All this led to the capital accumulation of merchants, who wished to invest them in credit activity. VIII century credit operations were considerably extended, which was promoted by informal trade unions (*kirads*), similar to later Italian *commendas*¹⁹⁷. It was distant transit trade that was a source of the Caliphate profit and wealth, though this trade scale should not be overestimated: due to the high cost of luxury goods, mainly transported by merchants, the total amount of trade operations could be high while the real volume of goods was not so significant. In XV century the export to the Mediterranean countries reached 0.5 million dinars, but no more than ten Arabian ships annually entered Genoa and Venice. In order to estimate the Arabian distant trade scale, it would be required to compare its volume with the Caliphate's general economic characteristics, however the Near East economy was not investigated from this standpoint and methods of determining the total volume of products and profit are not elaborated. Generally, most researchers consider the Near East's balance of

trade was passive. Only E. Ashtor noted that even when the Mediterranean trade was passed to the Italians, the balance was in favor of the Near East. It took out goods for the amount of 400,000 ducats from Europe and 600,000 ducats from other Eastern countries¹⁹⁸.

The successful function of such an extensive international trade network (connected with much risk) was to be provided by personal guarantees in debt obligations in the form of documents. X-century documents from the Cairo Geniza (geniza—a name of a storehouse for old documents, which according to Judaic traditions existed at synagogues) prove the use of such letters¹⁹⁹. Such a document was represented by the suftadja (which I. Toraval calls a credit *weksel* and a bearer *weksel*, popular in trade with China and Africa) and the sakk (the future check prototype)²⁰⁰. E. Ashtor is more cautious drawing parallels between the *weksel* and suftadja; he calls the suftadja a credit letter, avoiding its direct comparison with the *weksel*, and points out that by means of the suftadja, large sums of money were transferred to the Caliphate's distant areas, as well as to other countries without the risks and inconveniences of cash transportation²⁰¹.

Suftadja was widely used in various financial and trade operations. It was an order to pay a specified sum to the third party. Thus the risk of transporting large sums and the payment of customs duty on money export and import was avoided. A commission was charged for suftadja's issue and penalty was accrued for the payment delay.

Different documents could be called sakk. When an investor made a deposit (in cash or by goods) at the known banker he could pay off by checks in the name of this financier²⁰². As a matter of fact, the majority of checks were simple debentures (including an obligation to work a debt out).

As the circulation of these credit documents was based on personal relations and trust, it was not always possible to find a financier who could issue Cairo suftadja even in such a big city as Alexandria²⁰³. Therefore, the transition to actual *weksel* operations was not made. Personal relations between businessmen account for the fact that the Arab world's credit documents were mainly used by Jewish merchants, whose trade network extended over a vast territory and merchants themselves were united by a common religion.

Numerous examples of credit letter use are given in Arabic sources. An Arabic scientist (whose name is not mentioned) had with himself 5 thousand dirhams in cash and suftadja in case of the need of a greater sum of money during a trip to Spain. In another case, Nasir-i-Khusrau received a credit letter from his friend in Aswan (Egypt), addressed to this friend's authorized representative: "Give to Nasir everything that he will require, take a receipt and record the given sum of money to my account." An example is shown when the vice-king of Egypt sent credit letters for 30 thousand dinars to his representative in Baghdad, which had to be paid to Vizir, who was retired. The vice-king's representative acknowledged these documents valid and accepted the payment, after which he handed over the money to Vizier²⁰⁴.

The aforementioned sakk was another kind of debt letter. I. Toraval considered it as a check prototype and A. Mets named the *weksel*. Evidently, such interpretation discrepancy is explained by the fact that neither *suftadja* nor sakk can be identified with the *weksel* even though both of these documents had some similarity with it. Sakk was a payment order (*sakka'ala*), which a person gave to his representative for money operations in another place. The Arabian traveler Ibn Haukal wrote that in Audagusht (West Sudan) he saw a notarially certified sakk for the sum of 42 thousand dinars, issued by the inhabitant of Sidzhilmasa (in a 50-day travel) for his representative Muhammad Abu Sadun. Sakk also played an important role in Babylonia (which was part of the Arab state at that time), where credit operations had old traditions. In 912 a rich admirer paid the poet al-Djahiz by means of sakk, but the banker (*sairafi*) did not accept this sakk for payment. In 936 after the performance, one of this poet's admirers drew a check for the sum of 500 dinars in the name of the banker, who kept back one dirham (about 10%) for each paid dinar at payment²⁰⁵.

In O. G. Bolshakov's opinion, the latter example illustrates that either merchants completely disregarded the interest prohibition (*riba*) in the Islamic law, or debt and credit receipts were made out for a larger sum, which included the scheduled interest rate²⁰⁶. As G. Piccinnelli points out, referring to J. Schacht's opinion²⁰⁷, the use of *suftadja* (he calls it a payment order) and *hawala* (a debt transfer) often overstepped the limits of the traditional Islamic law. Initially, the concept "*riba*" meant usurious profit (in Arabia this practice was prevalent before Islam), but according to the Islam norms this concept widened, comprising the creditor-debtor relations and credit profit earning. Some Islamic lawyers distinguish these two *riba* kinds, considering the first of them allowed and the second prohibited. Any delay in the execution of the debt obligation and the debt payment in another place was considered as usury.

Islamic lawyers' interpretation of the above mentioned Koran citations resulted in the advantage, granted to exchange contracts, in which the rendered services and corresponding actions were simultaneously carried out. It was possible to avoid a situation, when one of the parties would gain profit, which was not fair, proportional and justified regarding the performed work and the price. G. Piccinnelli quoted a rule (based on Mohammed prophet's *khadisy*), which was observed by representatives of all schools of the Islamic law: "Gold for gold, silver for silver, land for land, barley for barley and salt for salt, without differences on quality and quantity and also from hands into hands"²⁰⁸.

Nevertheless, the main difference between the commercial law of Europe (with its constant attempts to avoid the canonical restriction of the interest charge practice) and the Muslim world is that the latter never intended to theoretically prove the delimitation of the commercial law and canonical interest charge prohibitions.

The trade development in the Islamic world and the early elaborated commercial law led to the appearance of credit documents similar to the *weksel*. At the same time, the degree of the credit operation development shall not be overestimated. As was noted by S. Goitein, who studied Jewish financiers' documents from the Cairo Geniza, there is no ground to consider that in X-XIII centuries the extensive banking credit system was already formed. It was most likely caused by the commenced period of stagnation of the Near East economy²⁰⁹.

Though Muslim lawyers and Abu Khanifa (699-767) legally substantiated such operations, having created the institution of the debt obligation transfer (*hawala*), they did not work out formal requirements either to the rules of this operation implementation or to the document itself. Therefore the evidence of the use of *suftadja* and *sakk* is fragmentary and incomplete²¹⁰.

It shall be taken into account that the Muslim law creators were private persons and the state, which had to incarnate this law provisions, was not the legislator. There was a gap between the Islamic law and the real practice. That is why many aspects of economic relations were set aside along with the detailed elaboration of some legal institutions.

As to the origin of "*suftadja*" concept, it came from two Persian words: "*suftah*"—a thing or a commodity, which one person transfers to the other (being in another city or country) and "*saftah*"—a thing or a commodity, which one person takes as a loan from the other on condition of their return in another place. Accordingly, the "*suftadja*" concept in Arabic explanatory dictionaries is interpreted as money or property transfer to the other person on condition of return in another place; such safe way of money or property transfer is the main specificity of this operation. In other explanatory dictionaries the *suftadja* is a letter of the money owner to his representative in another city with an order to pay money to the third party, in order to thus avoid the risk of their transportation.

The *suftadja* use was connected with informal unions (*kirad*), popular among Muslim merchants, which allowed avoiding a prohibition of interest-bearing loans by the informal agreement between their members. *Suftadja* was well-known (as a typical instrument of trade operations between the members of these informal unions) not only to Almaghribi (1135-1194), but also to the earlier lawyer—Abu Isaak (983-1083), who believed that any person had the right to issue *suftadja*. As a whole, the practice of using *suftadja* was important for mutual settlements between the inhabitants of the enormous Abbasid's state.

The later "*suftadja*" concept gradually disappeared from the Arabic language and the "*hawala*" concept was more often used for naming debt obligations, transferred from one person to another (and the documents in which they were embodied)²¹¹. This was promoted both by the elaboration of the *hawala* legal institution and the reduced significance of the Islamic countries in the world trade and the European control over most trade ways (mainly the Indian Ocean sea routes).

The origins of hawala as a legal institution date back already to Abu Hanifa (699-767), who collected and generalized the Islamic law norms. The hawala's main ideas are presented in the treatise of Malik ben Anas (712-795), the founder of the Islamic law orthodox school.

Let's consider a traditional form of the hawala obligation document:

*"The present agreement is concluded by me in handwriting.
In the name of Allah!*

The basis for the conclusion of this lawful letter is the fact that due to the assumed debt obligation Kurban Aha, the son of N. N., became the debtor of Aga Verdi, the son of N. N., having borrowed from him the sum of 150 tumans.

Hagi Hasan, the son of N. N., promised to the creditor (Aha Verdi) to pay the proper sum of 150 tumans instead of the debtor.

These three persons came together in the court as muhil, muhtal and muhtal alaihi and concluded the following transaction: muhil (Kurban Aha) by approbation of muhtal (Aha Verdi) and muhtal alaihi (Hagi Hasan) present to the aforesaid muhtal alaihi (Hagi Hasan) the lawful hawala. Muhtal alaihi (Hagi Hasan) declares the present agreement accepted at own free will.

All three persons state their consent that from this day any occasion owing to which this hawala becomes void will be considered groundless.

Now muhtal alaihi (Hagi Hasan) legally becomes the debtor of muhtal (Aha Verdi) and the initial debt of muhil (Kurban Aha) accrued from his debt obligation is invalid. On account of hawala becomes a new debt obligation of muhtal alaihi (Hagi Hasan).

All the above is set forth in writing to be the proof of the hawala conclusion, if required.

Signatures of three witnesses, who are present at hawala signing²¹².

This hawala form can be considered common, because the Arabs always observed the established schemes, later borrowed by other Islam obedient peoples, when concluding such agreements. The hawala conclusion in the court and signatures of three witnesses were to guarantee against possible objections. In the beginning, a hawala agreement was oral, but then the practice of hawala conclusion in writing was gradually extended. However the random form general principle is inherent to the Islamic law and so the form observance was not as important for hawala as for the West European *weksel*²¹³.

Islamic lawyers defined hawala's essence as debt obligation transfer from one person to another (which is really seen in the above hawala sample) and as debt clearing by a new similar debt. Thus two debts—initial and new, for the acknowledgement of which hawala was issued—were the subject of hawala. Three persons took part in

hawala: 1) muhil—muhtal's debtor; 2) muhtal—muhil's creditor; 3) muhtal alaihi—the third party to which the obligation to repay the debt instead of muhil (the debtor) was transferred. If hawala was concluded on the day of the payment date, the third party (muhtal alaihi) had to immediately pay off the debt. There were two hawala forms: 1) unlimited hawala (hawala mutlaka), in which the debt transfer to a particular third party (muhtal alaihi) was not used and 2) limited hawala with the first debtor's (muhil) notification of the creditor about the third party's (muhtal alaihi) debt payment.

Checks (sakk) as the simplest form of the remittance document were not required to be certified in court though the Islamic debt law also considered them as a hawala mutlaka version²¹⁴.

How did hawala and suftadja interrelate? Hawala (at least, in the days of Abu Hanifa) is the main debt obligation institution in the Islamic law; at first hawala was not always made in the written form. Suftadja—the credit letter (by E. Ashtor's definition), which was practiced in trade for money remittance without cash transportation, was most often used. They were legally united by the insignificance of the reason of the debt obligation appearance for its fulfillment (the West European *weksel's* abstract character shall be reminded). As suftadja could be in circulation and transferred from one person to another, it led to the appearance of successive people, compared with a consecutive number of jointly responsible debtors in *weksel* operations. Three persons, who made suftadja for themselves, were actually the same three hawala participants: muhil (the drawer), muhtal (the payee) and muhtal alaihi (the drawee). Though von Kremer believed that the difference between hawala and suftaga consisted in that hawala could be compared with the *weksel* agreement without the debt transfer from one place to another and suftadja envisaged the debt transfer to another place²¹⁵, it is difficult to agree with it. These concepts differ by the fact that at first under the name of hawala was meant only the legal institution, which created a legal basis for the suftadja utilization. Then hawala began to be applied for calling both the debt obligation transfer and the written debt obligation itself. Therefore, in time suftadja was rarely mentioned in the Islamic law records. The "hawala" concept limits extended and the name hawala started to be most often used for calling operations, which were very similar to the *weksel*.

The history of the legal institution of hawala and suftadja (the written debt obligation) began in VIII century. The expediency of suftadja use consisted in the development of commodity-money circulation and the requirement of money transfer (or of the debt obligation) for large distances (between different parts of the huge territory of the Islamic world). However, if the West European *weksel* law implied the importance of *rigor cambialis*, the strict collection of the debt as its integral element, the Islamic *weksel* law did not know such severity and the oral obligation, especially between the informal unity (kirad) members, was as significant as a written debt obligation document²¹⁶.

It is worth mentioning that thoroughly elaborated hawala principles and suftadja use rules that appear in the works of the Islamic law founders—Abu Hanifa and Malik

ben Anas just in the beginning of the history of Abbasidy's dynasty. During its ruling, the Arabic trade was dominant in the world. It is known that the Arabic trade was formed under the influence of the well developed Chinese trade of the Tan (618-907) dynasty's period, when a big colony of Arab merchants was in China²¹⁷.

In VIII century, numerous names of Arabian credit documents appeared during the active development of the Arabian trade. It is not only *suftadja*, but also *sanad* (*sanad*)—the support of the debt payment requirement; *tamassuk* (*tamassuk*)—the debtor's delay; *badal* (*badal*)—the exchange of money; *tahwil* (*tahwil*)—the hawala synonymous concept; *bara* (*bara-a*)—the debtor's debt clearing. The latter concept got in the Spanish and Portuguese languages as *al-bala* (*albala*), meaning "receipt"²¹⁸. Later the differences in the meaning of these concepts disappeared and in XIX century they were used for the designation of the West European draft—the bill of exchange—in the Persian, Arabian and Turkish languages.

In the Middle Ages as well as during the ancient World epoch, civilizations and cultures were not isolated from each other; contacts between different cultures were constant and versatile: all new inventions and knowledge came to Europe from the East, including trade methods, because from VIII century the Arab Caliphate began to play the leading role in economic and cultural relations. In X century, the Europeans had no authority in the Mediterranean Sea, which was completely supervised by the Arabs; all Mediterranean trade was concentrated in hands of the Muslims, Jews, Armenians and Greek merchants. In X century, merchants from the Italian cities of Amalfi, Venice and Genoa visited ports of Egypt and Syria; trade colonies of Amalfi merchants were in Jerusalem and Cairo²¹⁹. It promoted the European peoples' adoption of some elements of the Muslim material and spiritual culture (the acquaintance with the Arabic natural sciences, which were advanced by that time, with arithmetic and algebraic basics).

Money circulation and trade expanded in the south of Europe under Arabic influence. This influence increased in XI-XII centuries when the part of southern Europe (Spain) got in the power of the Arab Caliphate, and as a result the so-called Mauritanian culture appeared. Therefore, it is possible to assume that the Italian trade "maintained the tradition of the Muslim trade, which reached its peak in XI-XII century"²²⁰.

As R. Grashoff writes, "the use of the *weksel*, which replaced money at payment in an unfamiliar place, became one of the major achievements made by the West in the East. This rapidly raised the Italian trading republics to such a level, that Italian ships started to float in all seas and oceans, storehouses with Italian goods were on all coasts and Italian changers' tables were seen in all cities"²²¹.

However the assumption that the Italians adopted the practice of *weksel* operations from the Arabs is difficult to be confirmed or denied due to the incomplete available data about the peculiarities of trade in the Near East and the Mediterranean.

The Arabs knew *suftadja* much earlier than the first Italian bills of exchange, which appeared after the commenced Italian trade contacts with the Arabs—this fact is one of the main arguments in favour of this hypothesis. In Spain, part of which was in the Arabic power for a long time, the first bills of exchange also appeared independently from Italy (or at least credit documents very similar to bills of exchange), to which G. von Martens paid attention for the first time²²².

According to W. Holdsworth as early as VIII century, long before the bill of exchange appearance in Italy, Arab merchants used documents similar to the bill of exchange. They could be passed over from one person to another by means of some endorsement resembling transfer inscription on the back of the document, and the payee had the right of recourse against the drawer in case of the debt non-payment. In W. Holdsworth's opinion, the Arabian trade methods undoubtedly had an impact on Europe, especially in the days of Friedrich II (1212–1255), which is proved by the adoption of the Arabic terms. However, W. Holdsworth points out that the hypothesis of the Arabian bill of exchange origin is not so unequivocal, as it seems at first sight. The transfer ability of the Arabian bill of exchange analogue was significantly greater than that of XIII-century Italian bills of exchange—by means of a transfer inscription it could be handed over among many people²²³. This transfer ability of the Arabian bill of exchange analogue (the case in point is *suftadja*) is similar to the frequent transfer ability of a *mamrane*—the Polish-Jewish *weksel* of XVI–XVII century.

F. von Canstein was an adherent to the concept of the Arabian *weksel* analogues. He gave a sample of the XII-century Arabian document²²⁴, which L. Goldschmidt considered an unconvincing argument. A. Sayous expressed his critical attitude to this theory in 1933. In his opinion the analysis of the documents from the archives of not only Italy, but also Catalonia did not discover any signs of the Arabian influence, and R. Grashoff's hypothesis of the "aval" concept origin from the Arabian "hawala" is inconclusive²²⁵.

G. Berman supported the concept of the Arabian *weksel* analogues. He pointed out that the Arabs used commercial credit documents in the Mediterranean trade in VIII–X centuries, though they did not consider these documents as abstract agreements, that were debt obligations, independent of contractual relations, which caused the issue of these documents. When Western Europe borrowed such documents at the end of XI–XII centuries, they got an abstract character and became debt obligations, independent of initial contractual relations. G. Berman, unlike W. Holdsworth, believed that the Arabian *weksel* analogues did not have the circulation ability of European *weksels*, giving evidence that the circulation ability was invented by West European merchants in XI–XII centuries as a reaction to the commodity market development level and the credit "reservoir" availability²²⁶. Such argumentation is insufficient to be

convincing because it is groundless to talk about the developed commodity market in Europe in XI-XII centuries, especially in comparison with the Arab world commodity markets of that time.

F. Brodel also adhered to the same hypothesis: "If the *weksel*, which was for a long time known in the countries of victorious Islam of IX-X centuries, originated in the West in XII century, then it was because at that time money had to be transported over large distances—through all the Mediterranean and from the Italian cities to the Champagne fairs"²²⁷.

Summing up a brief review of the discussion, the fact of the Italians' adoption of the practice of *weksel* operations in a more simplified form than in the Arabic law of X-XII centuries with its *hawala* institution, can be explained by the insufficiently developed legal proceedings in the Italian cities, though the difference between the legal systems is more important. The West European law had another prehistory and principles, proceeding from the ideas of the Roman law, for which a debt obligation transfer (the basis of the Arabic *hawala* institution) was altogether unacceptable.

R. Grashoff quite convincingly proved that the "aval" term originated from the "hawala" concept²²⁸—one more argument in favour of the hypothesis that the Arabic credit tools had an impact on the origin of the West European *weksel*.

It is evident that further research is required for the hypothesis that the *weksel* idea was taken from the trade practice of Muslim merchants. It can be noted that in XIII century (when Islam's positions weakened in the south of Europe after the Crusades) Italian merchants—the Genoese and the Venetians—began to prevail in the Mediterranean. They became the main mediators between Western Europe, Byzantium and the Islamic countries. After the fourth Crusade, the Genoese got on the Black Sea coast where they created their colonies (the most important were Kaffa and Soldaya in the Crimea)—intermediate points in Italian trade contacts with Trebizond.

According to S. P. Karpov's serious research²²⁹, the early Italian type bills of exchange were widely used in these contacts. It may be assumed that owing to the Black Sea trade, the Italians got acquainted with the practice of using credit documents by their partners, Muslim merchants from Trebizond.

It is difficult to imagine that Italian merchants, who often visited the ports of the Muslim countries, did not know about the simple ways of secured money transfer across long distances and did not use it. This is partially proved by the Italian merchants' adoption of trade terms (not speaking about the Arabic figures and the calculation board system) from the Arabic language. It was Arabic translations of the ancient authors' works with which Europe got familiar for the first time²³⁰.

Since XII century, the Arabian trade significance decreased and Muslim merchants gradually lost the influence in the Mediterranean where they occupied a dominating position from VII till XI centuries. Western Europe began to surpass the Near East because the Italian trade cities-republics with a system of self-government that greatly differed from Muslim cities—completely subordinated to the government and were deprived of any autonomous forms.

After the Arabs' exile from Spain, their influence on Western Europe lessened and gradually the East Islamic countries themselves became influenced by the West. When colonial empires appeared, the Englishmen and the Dutch distributed the West European *weksel* in the Islamic countries, which replaced the original Islamic credit tools.

Finally, the penetration of the Western methods of credit and financial operations into the Islamic countries and their merge with the local traditions led to the appearance of Islamic banks (we mention them only in brief because this theme requires a separate detailed study), the significance of which increased toward the end of XX century as a result of the Muslim fundamentalism distribution.

PART 2

HISTORY OF BILLS of
EXCHANGE IN WESTERN EUROPE

2.1

Social and Economic Preconditions of Bill Circulation Development in Italy During XII-III Centuries

A PERIOD OF decline began in the European economy after the disintegration of the Roman Empire. The banking activity, conducted by *argentarii* in the Roman Empire, almost completely terminated. Medieval Europe was an economically poor and uninfluential region of the world; Byzantium, the Muslim countries and China surpassed it by the city number and size in addition to money circulation development²³¹. Christianity's attitude toward the ancient traditions was inconsistent from a complete prohibition of the antique heritage as pagan to the intellectual elite's study of the works of the ancient Greek and Roman authors.

The Franks' state considerably differed from the Mediterranean civilization with the developed sea trade—its economic system was connected with land. The Franks' Empire was totally surrounded by hostile peoples—the Scandinavians, Magyars, and Arabs. In X century twenty European cities had only several thousand inhabitants; only in Venice and London the populations were more than 10 thousand people (whereas the population of Constantinople reached 1 million).

The credit business also temporarily ended with the disappearance of the Roman Empire and revived only during the prosperity of Italian trade cities. Changers, whose craft was kept, continued to exchange money in the markets as in the ancient time. It is difficult to tell how much medieval Italian changers (*campsores*) used the experience of

the ancient Rome *argentarii*. Most likely their activity was formed under the influence of the gradual trade development.

At first mainly Jews were changers in Europe, but from XI century they were replaced by the Italians—Lombardians, Florentines and Venetians.

Money circulation was insignificant until XI-XII centuries, despite a lot of various coins. Coins were estimated not as money (and an exchange tool), but only as a piece of precious metal, the value of which depended on its weight. The situation slightly improved after the coin reform of Charles the Great, who introduced the “livre—sou—denier” system (1 livre was equal to 20 sous, 1 sou was equal to 12 deniers). Livre and sou were conventional money units and only bits—silver deniers were actually in circulation in XIII century²³².

The economic activity rapidly developed in Europe from XI-XII century and laid the basis for the formation of the West European civilization, leading to a significant reassessment of social values: handicraftsmen and merchants (whose work was not earlier appreciated) began to unite and became the leading social force in Northern Italy (and in Northern Germany). The importance of merchants and the usurious capital, closely connected with trade, increased and money exchange and commercial activity, which did not play an essential role in the European life in the past centuries, became much more intensive.

This process was especially characteristic of the trade cities of Northern Italy—Florence, Venice and Genoa, which saw the formation of the economic principles of a new European civilization—individualism, industrialism, rationalism and pragmatism. The medieval city organization, the structure of shops and guilds, and the productive and commercial activity contributed to the development of future bourgeois relations to replace the feudal order. Italy had a favorable geographical position and an outlet to the Mediterranean Sea, the center of ancient trade routes. As sea trade prevailed, it was Italy who became an intermediary between Europe and Asia.

It was also promoted by the intensive trade development favored by the relative peace, which was established in Italy after Goths' incursion at the end of V century. In the beginning, the cities of Southern Italy—Amalphi, Palermo and Messina, subordinate to Byzantium—were the main trade centers. The trade significance of these cities increased in IX century owing to the trade with the African Arabs, in particular with Tunis (the first records of the Amalphi merchants' stay there date to the year 870) and Cairo (the references to Amalphitans in Cairo are known from the year 978). Eastern goods came to Rome and other cities of Italy through Amalphi, whose name was well-known to the merchants throughout Europe in IX-X centuries. Amalphi's trade prosperity ended in 1073, when the city was put in the hands of duke Robert Gijuskar and departed from Byzantium. Trade privileges, granted to the Amalphitan people in Byzantium, were cancelled and the city completely lost its importance in trade. Amalphi's fall gave rise to the prosperous city of Venice. Its merchants could be met in Egypt and Syria in IX century. Venetian merchants had business ties in Byzantium and with Venetian governors (*doges*), who made a great effort to establishing trade

contacts with the Arabs. The doge Pietro Orseolo (991-1009) directed his ambassadors to Northern Africa, Syria, Egypt and Sicily, and succeeded in getting privileges for Venetian merchants. The role of Venice further increased after the fourth Crusade and the capture of Constantinople. Venetian merchants dominated the seas and east trade became so important that it was even considered to transfer the capital of the Venetian trade state to Constantinople²³³.

Simultaneously the trade law norms were developed and the first trade codes appeared—*Ordo maris* in Pisa in XII century, *Tabula Amalphitana* in Amalphi and finally the most universal collection, *Conulato del mare*, which was used in all Italian cities²³⁴.

In X-XII centuries the economic rise epoch began after the long decay period. In Europe, where two poles were clearly distinguished—the south and the north (the Italian cities and the German cities of the Hanseatic League), trade considerably grew and the importance of the Mediterranean Sea decreased. Fairs in Champagne, held in the cities of Truoi, Provins, Bar and Lagny, became the center of this space in XIII century. Dealers from all over the world arrived there. According to F. Brodel's well turned expression, not only was the European economic space formed, but also the origin of Europe itself²³⁵.

However, in XII-XIII centuries the simplest market forms with the barter still prevailed in most European countries, about which Bualo wrote in the "Handicraft's Book" (around the year 1270). All was sold on the spot and immediately paid at such exchange. Credit played almost no role in such markets, which existed as far back as the ancient World period²³⁶.

The Church greatly influenced the commercial credit development. As W. Endemann points out, the exchange law doctrine appearance and development (until XVII century inclusively) can be understood in view of the canon usurious interest theory. It does not mean that the bill appeared only for avoiding the church credit interest prohibitions. The reason for its origin was the expansion of commodity-money circulation²³⁷.

As the medieval states' vital activity, including the economic one greatly depended on church, the canon approach to any economic activity dominated in Europe. According to it, only a personal work can be a source of the means of existence. In this regard the medieval outlook much differed from the ancient one—the Greeks and Romans despised work as a dirty occupation, worthy of only slaves. The negative attitude of the canon church law²³⁸ to the financial-credit activity significantly constrained the development of financial-credit operations.

Except for the physical work, there were only two ways for enrichment—profit on the sale of goods at higher price and the credit activity interest profit. The Church actively opposed credit activity—an interest-bearing loan was strictly forbidden as

“money cannot cause money” according to the canon doctrine. This idea was based on the evangelical aphorism—not to count on a reward at loan granting (the Gospel of Luke, 6, 35). These words were literally apprehended by the Church. The attitude of Matthew (“mytarj”, or a banker), on which Christianity’s positive approach to financial activity could have been based, was rejected by the medieval mentality, which condemned any loans between the Christians. Therefore the usurers’ role was passed to Jews even though it did not hinder large monasteries and abbeys from performing the credit role as well.

The Church also banned credit activity because people who were usually in a difficult situation used loans.

There was a widespread opinion that a rich creditor took away last pennies from a poor debtor as interest, thus increasing his wealth. The Church ruthlessly struggled against credit activity and, as M. Weber noted, many merchants were forced to return the interest²³⁹.

The canon interest prohibition, characteristic of all the medieval trade and credit, actually denied the profit gain. As W. Sombart wrote, there is an impression that people, who wanted to receive profit, were subject to condemnation only for this very intention, because any inactivity and excessive wealth were forbidden by law. Only the transformation of money into capital, when the interest credit became a characteristic capital feature, slightly reduced the negative approach toward usury²⁴⁰.

At first interest credit restrictions related only to the clergy, which was forbidden to receive such profit by the Council of Nicaea in the year 325. In IX century, the loan interest gain was declared sinful for all. In 1173, a corresponding canon legislation decree appeared, in which the pope Alexander III threatened usurers with an excommunication from the Church and prohibited profitable commercial agreements. In 1243, Gregory X suggested to expel usurers from the city communities and in 1311 Clement V declared any public legislation contradicting the church interest ban invalid. Thus usurious activity became considered a crime.

In particular, it was stated in the charters of the Florentine cloth dealers of XIV century that a merchant who is engaged in usury is expelled from the shop. It was forbidden to loan money with interest for pledging goods and for a debt note in the 1367-year charter of Florentine changers. The prohibition covered all usurious forms and those who violated this rule had to pay a 100-lire penalty. At the end of XIV century, similar interdictions were in the charters of all Florentine shops and also in the charters of the changers of Milan in 1396, Bergamo in 1497 and other cities.

The Church’s long resistance to credit operations was also caused by theologians (first of all Thomas Aquinas), who used Aristotle’s idea about the difference between the autarchy, the family self-sufficing economy and the trade economy. Proceeding from this they compared the natural economy (only for the existence maintenance) with the money economy (considered unnatural). Aristotle’s words that money does not generate money were used for a dogmatic prohibition of any credit operations. However Thomas Aquinas—one of the leaders of the Medieval theologians—created

the doctrine about “the fair medium,” according to which the wealth itself is not sinful and a person has the right not only to have it, but also to aspire to its accumulation, provided that it will be used for a fair and noble purpose—supporting one’s family, helping the poor, etc. According to this doctrine, the utilization of wealth for construction, production and trade was a “charitable business” and practically enabled them to avoid church bans. The interest was also considered lawful if there was a risk or impossibility for a lender to receive a benefit.

Owing to the latter doctrine, money exchange (*cambium*) and transfer could exist, and the bill, a practical means of this transfer, could move from one market to another because the benefit it gave was guaranteed in advance, and a certain risk always existed. Only the so-called “dry exchange” (*cambio sicco*) with the bills, which did not provide money transfer from one place to another and only masked a usual interest loan, was considered usurious.

The situation changed during the Crusades, when Italy (through which all Crusaders’ routes passed) received control over the trade routes of the Mediterranean Sea, where earlier merchants from the Islamic countries dominated. Italian cities used their fleet for the transportation of crusaders. The Crusades stimulated trade development and the activity of changers, who accompanied crusaders, and the acquaintance with the Eastern countries promoted the adoption of new trade customs and the general Italian trade growth.

In addition, they contributed to the appearance of merchants as a professional group: until XI century there were very few merchants in Western Europe (with the exception of several Italian cities), however there were some Jewish, Syrian and Greek wandering dealers. During the Crusades, merchants participated in complex commercial operations, especially in Italy (the Italian merchants’ trade interests extended from China, where Marco Polo traveled, to Brugge and London, where they set up their settlements)²⁴¹.

Though the Catholic Church frequently imposed embargoes on the goods exported from Christian Europe to the Muslim countries, in 1198 Venetians convinced the Pope that they did not have enough of their own agrarian resources and could exist only on account of trade. Innocent III permitted them to trade with the sultan of Alexandria (except such goods as iron, weapons, ships, building wood).

The expanded commodity-money circulation required increased credit operations. At that time, the volume of the activity of Jewish usurers (who monopolized this function) became insufficient and Christian merchants did not yet take credit operations in their hands; as a result, monasteries performed the role of “credit cashiers.” In J. le Goff’s opinion, despite the canon law restrictions in real life, the Church contributed to altering the negative attitude toward merchants’ activity (which, as a matter of fact, provided the economic rise) and proclaimed that work is

not only the punishment after the fall (due to which a person should “by the sweat of his brow” get a daily bread), but also a “rescue means”²⁴². Consequently, at the Turinsky cathedral in 1163 the Church permitted loans secured by the land property, which was carried over to the creditor at the debtor’s delayed debt payment. In XV century with the development of commodity-money circulation, when new ways of avoiding church restrictions appeared, theologians gradually softened their position. Eased church restrictions stimulated the development of commercial credit in Italy, but the barter still significantly curbed the economic development of the European countries, limiting the volume of trade operations.

In this connection, W. Sombart gives the following characteristic example. The cost of the plundered caravan of 61 merchants, making its way to the mass in Frankfurt in 1391, equaled 9,544 florins, that is each merchant going through such difficult travel had with himself the goods only (in the average) for 156 florins (27 out of 61 merchants suffered losses for the amount of less than 100 florins and some people lost only 13, 10 or 8 florins). The trade operation’s small volume is also confirmed by the sums of the bills issued to the Flanders trade centers during their peak prosperity—out of 102 Ipsrsky bills issued from 1251 to 1291, only 17 were issued for the amount exceeding 100 pounds, the largest being 239 pounds and 6 shillings²⁴³.

According to W. Sombart, the low volume of medieval trade operations testifies about the “craftsman” character of the professional trade activity. He noted that their thinking and activity forms make them similar to small and average industrialists.

However, critics of W. Sombart believe that he underestimated the volumes of commercial operations, and his comparison of the medieval epoch statistical parameters with the modern ones is incorrect. This is true particularly in view of the differences in the value of life as a whole and differences in the understanding of requirements of medieval and modern living²⁴⁴. Aside from the character of trade relations, the commodity-money circulation and credit operations was formed and developed according to the medieval period’s own laws, therefore to compare them with the beginning of XX century, when W. Sombart wrote his work, would be incorrect.

There is no reason to consider medieval merchants as economically competent businessmen of the capitalist epoch. The medieval dealer’s artisan essence is manifested mainly by his aspiration not so much for the enrichment and the profit increase itself, as for the adequate standard of the merchants’ life to be earned by the daily work.

This artisan spirit was reflected in many reformatory treatises written in the medieval epoch. Martin Luther wrote that “nothing else is to be found in trade, except livelihood earning. All expenses and the commodity transportation cost shall be calculated accordingly; thus a merchant should determine the sums to be received by him as compensation for his work.”²⁴⁵ Similar ideas are also stated in Christian Kuppener’s treatise about usury written in 1508, where small traders who only earned enough to support their families were opposed to merchants who strived for excessive enrichment²⁴⁶. It was a reflection of the medieval idea of “the fair price” and the sinful aspirations of attaining wealth.

The charter of Florentine changers of 1299 did not allow shop members to go along the city streets in search of clients for bill operations; “bankers” were to stay at their desks and wait for a client, which demonstrates the views of the prohibition of competition and the service market expansion struggle. Similar requirements were kept in the rules of the exchange court in Strasbourg (1380 year) in 1380. It is stated in item 35 of these rules that no one in this “exchange house” should invite a client for money exchange or call the buyer by his name. This artisan character of the professional medieval trade was kept in Italy until the beginning of XIV century and in other countries of Europe until XVI century²⁴⁷.

The illiteracy of merchants during the Middle Ages is also significant. Only few merchants could read and write throughout Europe during the Middle Ages. The commercial activity calculation ability was very low and the majority of the medieval and even Renaissance populations were unable to count at all. Any physical work was considered easier than arithmetic calculations²⁴⁸. The Arabic figures and zero were distributed in Italy from XIII century. These figures began to be used in England and Germany in the beginning of XVI century. In XVI century, Luca Rem (?) wrote in his diary about a trip to Venice, where he wanted to learn to count (the knowledge of which, at the time, was considered particularly erudite). Though, in reality, it was simple arithmetic using whole numbers²⁴⁹.

Despite the general low level of literacy and mathematical skills of their populations, Italian cities surpassed other European cities on this point due to the gradual adoption of Roman law ideas and the formation of the new European economic law, the first creators of which were Mediterranean merchants. The simultaneous appearance of the double record system in different cities of Northern Italy also put Italian cities ahead in both education and efficiency. It is difficult to overestimate the significance of the development of the double record system (and financial operation account methods) in the distribution of the commodity-money circulation in credit operations in particular. The double record system is an important precondition of the capitalist economy formation²⁵⁰.

In XI-XII centuries, the regions where important trade routes crossed, Northern Italy, Northern Germany and Flanders, as well as North Eastern France, were the most economically developed European areas. Italian merchants from Venice, Genoa, Siena and Florence separately operated in the borders of their cities, but they influenced a vast territory (the Genoese colonies were known even in Crimea). In 1161, a large trade confederation appeared in the German territory, Hansa, which in XIII century expanded its authority from England and Sweden up to Northern Russia (Novgorod).

However, the development of trade and economic relations in Italy advanced it to the first place among other European states as this country was in the junction of the trade ways, which connected Western Europe with the Far East, the center of economic relations in XII century. As compared to Italy, ancient Rome was not a trading nation. They were more interested in law, legislation, government, military

victories and the expansion of the empire. The Romans disgraced production and trade, in which they thought slaves or other barbarous people should be engaged. The trade attitude radically changed in medieval Italy. Vigorous and free Italian businessmen ensured the trade and economic superiority of Italy, making it a center for trade with the East. Independent trade republics appeared in Northern Italy, which carried out most trade operations. "All the wealth of the East, all Levant's caravans concentrated in Italy and from here, as from the center, dispersed to the other states of Western Europe"²⁵¹. At that time many coins, circulated in Italy, existed in Europe and on the Asian and African coast of the Mediterranean Sea.

Italy's money circulation, similar to the already mentioned system "livre-sou-denier", was based on Lira, sou and denier. Twenty sous were in one Lira and twenty deniers—in one sou. Similar to livres, used for payment at Champagne fairs, the Italian Lira and sou were conventional units. Small silver deniers were the most widespread. At the same time, other coin types could be seen in Italy, in particular gold Florentine florins, Genoa genovini and Venetian ducats (zecchini). The total number of gold coins circulated in Europe equaled approximately 900 million, out of which 500 million were in Italy and 250 million in Florence. If in XIII century Siena still competed with Florence as an all-European center of the banking-credit activity, then by XIV century Florence was the leading city, which became a banking-credit office for all Europe²⁵². The Asti city was a large trade center in Piedmont. Its merchants and bankers were well-known in France, Burgundy and England as Lombardians. Siena was another center of trade-credit operations with the famous Bonsingori banking company.

Numerous Italian city-states and independent trade cities had the right to issue own coins. However in most cases the governors of these city-states falsified coins, reducing their weight at stamping. Therefore, these coins required someone to check their weight, the metal quality and even the stamping reliability. Despite the visible unification, there were coins with a different real cost under the same name in different countries. A lot of separate princedoms and counties with their own coins also complicated the money circulation, and the stamping technology imperfection led to the fact that a state's identical coins, issued in different years, had a different precious metal content and a different value.

These circumstances made the craft of changers—campsore important, the shop unions of which existed in many trade cities of Italy. Their rapid distribution was promoted by an opportunity to earn profit at the exchange of coins (another financial operation benefit that was forbidden as usury). All researchers of the history of bill operations share an opinion that initially campsore's activity was limited exclusively by money exchange. The concepts "*cambiatores*" and "*campsore*" were already used from XII century until campsore were called banchieri in Italy²⁵³. The first changers' offices appeared in Italy in XI century. Changers carried out their operations in markets at special tables (*banco*), and consequently they were named *banchieri*, from which the "banker" and "bank" concepts originate.

In the beginning, the canon church law was tolerant to campsore's activity that promoted money profiteering. Later this craft was criticized by church. However, the church condemnation did not stop its development and only forced campsore to mask profit earning methods. It is obvious that the exchange craft was not only limited by the coin exchange, and an idea of money transfer without a direct transportation was originated, which finally resulted in the appearance of the Italian type bill²⁵⁴.

Changers (both Jews and Italians) were not very respected in European cities, because they were frequently engaged in usury, granting interest-bearing loans. Such changers were quite often exiled from different cities and their properties were subject to confiscation. Thus, Jews were more persecuted than other people, and consequently in XIII-XIV centuries, the exchange activity was gradually concentrated in Italian hands. Campsore could be met in all trade cities of Italy—their services were used even by the Pope. Steadily, the Italian changers' craft penetrated into other countries of Europe, particularly Germany through Flanders.

In XIV-XV centuries, Italian changers created the first banking companies, which supervised financial-credit operations in most European states. They were the Florentine family banking unions Bardi, Perucci, Medici and then well-known companies Acciaoli and Uzzano, who engaged in depositary and loan operations and credits in the currency of any West European state. The banking companies had an extensive network of their representatives and agents in different countries that stimulated the development of correspondent relations and transfer operations. In 1349, the Florentine firm "*Iacopo & Caroccio*" had its branches in Avignon (the Popes' residence), Brugge, Brussels, Paris, Siena, Perugia, Rome, Naples, Bardette and Venice. Medici's firm had 16 offices in different places in XIV century²⁵⁵.

In Venice, the exchange craft was considered one of the best seven crafts, and the changers' shop was higher than 14 working craftsmen shops. A separate exchange shop (*cambio*) appeared in Florence in 1202. It was engaged in the direct exchange of money and the trade of metals and precious stones. It also carried out small local depositary and credit operations, because large Florentine bankers were not members of this shop.

The activity volume of Italian merchants and bankers is demonstrated by the well-known directory for merchants "*Practica della mercatura*" (*The Art of Trade*), written by Pergoletti, an agent of the big Florentine company Bardi in the first half of XIV century. It enumerated the cities on the coasts of the Mediterranean and Black Seas in addition to Armenia, Persia, Turkestan, Mongolia and China, where Italian merchants traded²⁵⁶.

Because different coins circulated in the Italian cities, the monetary system was rather complicated. That is why conventional money units mentioned in contracts and accounting records seldom corresponded to the ones actually used. Therefore, the development of trade relations required Italians to immediately simplify payments and facilitate money transfers to other countries, causing an objective necessity for using *lettera di cambio*, or bills.

The credit companies (Acciaoli, Bardi and Perucci, del Bene and Uzzano, Pitti and Vellucci) found new ways of avoiding church prohibitions by means of bills. The appearance of the new legislation in XII–XIII centuries also contributed to it. This legislation revived the Roman law, including the concepts of private property and the agreement's unlimited freedom. The revival was greatly promoted by the Bologna University legal school, which tried to theoretically prove the validity of concluding agreements on the loan interest payment. On one hand, Italian money changers and bankers found their activity's justification in the ideas of the Bologna doctors of law and also in Thomas Aquinas' doctrine about "the fair medium" while on the other hand, the same Doctors of theology, canon and civil law struggled against usury and credit activity, exposing different ways of masking interest credits by the bill issue.

The higher legal status of banking companies and wider bill operations was promoted by the business relations with the Papal court, in particular by the companies who participated in collecting the Papal church taxes and also the advance payment of large sums of not yet collected church tithe. The Uzzano Company, created in the first half of XIV century, carried out transfer operations, which were especially significant for the Papal curia.

The Papal tax collection in all countries, influenced by Catholic Church, required a search of new means for their transfer. Because of this, medieval society first got acquainted (though at the initial level) with bills and money remittance because the documents used for the Papal tithe transfer were similar to bills. Rome was not only the religious, but also the financial center of all catholic territories. The total money circulation of the Papal financial activity in conjunction with the tax collection was quite significant. However, W. Endemann thought that the Church's tax collection should not be considered the main reason for the appearance of check and bill operations²⁵⁷.

Despite the Church's demonstrative struggle with credit operations in XIII century, in the beginning of XIV century, the Papal curia began to economically depend on the Italian banking companies more and more. It lasted until the middle of XIV century, when the large Florentine companies, including Perucci, fell into decay²⁵⁸. Other banking companies of Italy actively operated until XVI century, but eventually failed as well (of 103 private banks of Venice 96 went bankrupt and only seven continued to exist). One of the reasons for the failure of these companies was investment in speculative enterprises (which resulted in legislative restrictions of their activity) and also large loans to the state, which frequently went unpaid. Nevertheless, the main reason was the general decline of the Italian republics, which ceased to be the world trade center. Italian bankers were replaced by the German bankers, and later Amsterdam became the world center of the financial-credit activity.

In XIII–XIV centuries, Italian credit companies prospered and it became a customary practice to use bills in their activity. Considering these circumstances, most researchers believed that it was Italy where the bill as a financial tool with established and precise features was not only formed in XII–XIV centuries, but also developed and extended.

During the bill's development and formation as a specific financial tool, two main exchange operations were spread:

- 1) *cambium manuale*—a direct exchange of one coin for another. This operation did not require the parties to trust each other; the credit aspect was completely absent and there was no need for the written document certifying such operation;
- 2) *cambium trajectitum*—an exchange of money with its transfer (including *distantia loci*—an exchange which provided money payment in another place and *diversitas temporis*—an exchange with money payment in due time)²⁵⁹.

As one of the parties transferred a precise sum of money to another (the loan essence), some mistrust between the parties was quite natural. As money payment was transferred to another place and for another time, the person who entrusted the money had high risks associated. Therefore, such an agreement required a written form, *cambium cum scriptura*, which caused the appearance of a debt document. The latter can be considered as a bill in the West-European meaning unlike the bill financial tools, which existed at various times.

Thus there are several objective historical reasons of the bill operation formation in Italy.

1. Many types of coins were in circulation in Italy.

The reason for this was that Italy included several independent states, which had their own currency. The variety of coins was caused by the fact that Italy was an active trade center. Italian merchants traded with states on the African, Asian and European coasts of the Mediterranean Sea. These coins were of different quality and of different value, respectively. Thus exchange operations required experience and special knowledge that in turn required changers. It was an exchange of different types of coins that provided the first purpose for a bill.

2. *An established exchange of different types of coins was arranged in Italy*, in which campsores were engaged, who carried out not only money exchange operations, but also money transfer. A changer had to have sufficient capital for the supply of coins in demand. It was rather difficult for a person to save such capital, and it led to the appearance of commandites' trust companies. In Italy, changers belonged to merchants (*mercanzia*—one of three traditional city layers in medieval Italy) and they had all privileges of the merchants' guild (*mercatores*). It related to severe punishments and the rule-breaker detention, which was provided by the institution of elective judges. Thus the guild quite effectively supervised the activity of its members, adopting new ones or expelling those who lost their trust. The guild members' control increased the reliability of the money exchange operation (or money transfer), and also the trust to changers' trade books, which (like ancient argentarii's *tabulae*) were compared to notarized documents²⁶⁰.

3. *A very dangerous transportation of large sums of money in the medieval time.* One of the main reasons of the bill appearance was a need in the safe money transfer from one place to another with the simultaneous exchange of different coin types. This is reflected in the names of this financial operation: *permutatio* in the Roman Empire and *cambium*—in medieval Italy. The bill modern names in different languages (the English *bill of exchange*, the French *lettre de change*, the Italian *lettera di cambium*, the German *Wechsel brief*) kept signs of the bill origin from a coin exchange operation. And a heavy weight of metal coins that complicated their transportation should be also considered. All this taken together naturally resulted in the wish to find the safer money transfer way.
4. The requirement to transfer large sums of money (the church tithe) to Rome—the center of the Catholic world—raised a problem of their safe transportation.
5. *The specific character of medieval fairs.* Italian merchants and changers played the leading role at fairs. Merchants from different countries had to exchange the money, which they received at the fair, into the coins of their states. It promoted the custom not to pay in cash and issue letters with an instruction to the Italian changer's agent, who lived in the merchant's native land, to pay a certain sum to the latter at a certain time. This practice was also promoted by Italian trade companies, who had their representatives in all important commercial centres of that time. It made the remittance safe, simple and convenient. These representations were headed by the Italian campsores' partners (more often his relatives), which ensured full confidence to these operations.

Thus Italy witnessed the formation of the bill as a financial tool and of the corresponding exchange law norms, which gradually extended to other European countries. In particular, the first records about the bill use in the Italian trade relations with England are dated 1199 and 1207; bills are first mentioned in parliamentary acts from 1379²⁶¹.

Though German economic prerequisites of the commodity-money circulation development were close to the Italian ones (the first bill similar documents, used in the trade cities of the German Hanseatic League, date back to XII-XIII centuries; they laid the basis for M. Neumann's statements about the German bill's origin), the opinion that the bill in its modern meaning was formed in Italy is the most widespread and proved by the historical facts.

2.2

Initial Bills in Italy of XII-IV Centuries

THE GENERAL DEVELOPMENT of the commodity-money circulation in XII century (and especially in XIII century) made an operation *cambium*, an exchange of money, prevalent. Italy was the main center of such operations. The majority of the East trade was carried out through Italy after the Crusades. Italian changers, known as *campsores* or *bancherII*, were engaged in exchange operations in the Italian sea trade cities of Genoa, Venice and Florence. The formation of the Bill of Exchange, as a financial tool, commenced in Italy in XII-XIV centuries. The time when the bill began to acquire its precise form can be considered the period of the Italian type bill (or the so-called original bill).

As A. Sayous noted, Levin Goldschmidt and Adolf Schaube were often criticized for overestimating the socio-economic preconditions of the Italian type bill appearance as compared to the legal ones, though the consideration of this aspect of the initial bill type allows for a correct estimation of these processes²⁶².

Despite a wide use of the operation *cambium*, its essence was not determined, which is why it was not always possible to distinguish this operation from other similar operations in XII-XIV centuries²⁶³. First it was a simple *campsores*' exchange of some coins into another on the spot. Money was exchanged from hands into hands (*cambium manuale*) and this operation did not have a precise credit form. These operations were seldom notarized in XII century, so now only few documents are available. The mechanism of *campsores*' operations became complicated in time, especially during fairs.

The legal institution *cambium* was a version of a general exchange operation, *permutatio*, which assumed an exchange of one type of coin for another. The sum equivalent was to be paid later in another place (*distantia loci*) in the coin, circulated there, or in some time (*distantia temporis*). Thus money exchange gradually grew into an exchange with a transfer (*cambium trajectilum*), and an exchange agreement got credit elements.

These innovations could be more often observed in international trade agreements and they were quite rare in usual changers' activity in markets. The reason was simple—a merchant did not want to carry money to another city or country due to possible dangers in the medieval European roads by himself. The use of the bill enabled merchants to transfer profit from Italy to other countries where it could be received in corresponding monetary units. In most cases money was paid not only in the required place, but also at the required time.

Though the Italian trade total amount was insignificant in XII-XIII centuries compared to the subsequent centuries and it was mainly in cash, commercial operations quickly expanded in different countries, especially in the Mediterranean ones, owing to the Italian merchants' activity. It was also promoted by the increased trade with the East during the Crusades. The large sum transfer between different countries became the prerequisite of the *cambium* legal institution's formation. At that time the operations *cambium siccum* and *cambium fictivum* (a "dry" and fictitious exchange) were considered illegal and were made only for avoiding usury prohibitions²⁶⁴.

As for the time of the bill's appearance, Raphael de Turri affirmed that the bill already existed in XII century, but he did not provide strong evidence of his theory²⁶⁵. F. Biener made a list of 14 documents relating to XII-XIV centuries, however German researchers of XIX century, in particular W. Endemann pointed out that the majority of these documents were not bills. The most ancient of these documents is dated 1157. F. Biener quotes it from Kanale's book "The History of Genoa":

"Lire 10 Genovese prese a cambio con promessa
di pagarle in Tunisi".

Though in this brief record the matter really concerns the transfer of 10 Genoa Lire to Tunis and the concept *cambio* is mentioned, the majority of researchers do not consider this document as a because there is no specification of the difference of the coins received and paid in Tunis. The document's features allowed W. Endemann to assume that in the middle of XII century, the bill (which could be named a promissory note today) did not yet presuppose an obligatory exchange of different types of coins, though a similar document would have hardly been recognized as a bill in several decades²⁶⁶.

E. Ashtor believes that the first document, which can be considered a bill, is dated 1220, pointing to the fact that such operations appeared outside Europe (we

have already mentioned E. Ashtor's opinion about the Arabian bill origin)²⁶⁷, and T. Bloomquist emphasizes that these documents can be considered as bill contracts (*instrumentum ex causa cambii*)²⁶⁸.

The notaries' records (in particular of the Genoa notaries), the first of which are dated from XII century, allow a more detailed study of Italian changers' specific activity in XII-XIV centuries²⁶⁹. The first bill prototypes, written in the Italian and Spanish languages, date to the same time. It is "The notes" ("*Notularium*") of the Genoa notary Giovanni Scriba (1155-1164), which contain information about more than 400 agreements. Moreover, the specificity of bill operations of XII-XIII centuries can be demonstrated by the records of the Genoa notaries Oberto Scriba di Mercato (1186 and 1190), Gugliermo Kasinens (1190-1192), Bonvilyano (1198) and Giovanni di Giberto (1200-1211)²⁷⁰, in addition to the records of the notary Lanfranco (1180-1216). The Marseille's notary Amalric's notarial acts, which include data about 360 agreements, date to XIII century.

Contracts for money exchange operations with money transfer from one place to another are very seldom met in the first Genoa notaries' acts; their quantity increases only in the middle of XIII century. Though Giovanni Scriba's customers consisted primarily of dealers and shipowners, his records contain few contracts for the operations of exchange from one place to another. These contracts are mainly sea loans, but the "*cambium et permutation*" concept is already present in 1157 and 1164 acts. The notary's role was quite important in XII century: as many merchants were illiterate and frequently could not independently draw up documents, they applied to the notarial service that gradually led to the formalization of such contracts and, in its turn, promoted the development of the first bill forms.

The Genoa notary Lanfranco's act of 1184 already describes a credit sale operation with the currency exchange on the spot due to a certain person's need for another type of coins, in particular Genoa coins. The concept *cambium—tantum de tuo cambio and tantum cambium unde promittimus* appears in local trade operations in two others acts of the same year²⁷¹.

Contracts for money exchange and transfer operations are also quite rarely found in the acts of the notary Oberto Scriba di Mercato, whose records are dated 1186. Sea loans and trade union contracts prevail among these acts. The following example from the end of XII century shows such bill obligation form:

"I, Soliman, state to have received from you, Ogeriya, 15 pounds of Genoa denars, which I assume to transfer to you or your factor (representative) in Alexandria at the rate of 2.75 byzantsys (the Byzantian coin) for a pound"²⁷².

Gradually credit and payment operations, which implied money transfer from one place to another, became more often practiced—first in the trade with Egypt and Levant (we don't have enough data on these operations) and then in the operations at Champagne fairs. In one of the Marseilles acts, Etyen de Manduel

and another dealer (whose name is not specified) granted a sea loan, which was to be repaid in Marseilles. Evidently, the agreement's participants expected to realize a significant profit²⁷³.

In the notary Giovanni di Giberto's documents, these contracts are mainly recorded as loan operation (*mutuum*), but with a reservation, that they were concluded under the conventional name "exchange" (*nomine cambii*), because any loan (*mutuum*) mention could cause severe church persecution due to its usury condemnation. That is why dealers tried to convince theologians that an exchange contract was only partly a loan and its main purpose was to transfer money from one place to another. For this reason, the expression *mutuo nomine cambii* quickly disappeared from the Genoa notaries' dictionary and was replaced by the expressions *ex causa cambii* or *omine cambii vel vendicionis*, which already had no reference to a loan.

The formula *ex causa permutacionis sen cambii* prevailed in the contracts of the Marseille's notary Amalric: such expressions were used for avoiding a negative church reaction. On the whole, such acts had the general name *instrumentum ex causa cambii*; only they can be considered direct bill prototypes.

Below is an example of the *instrumentum ex causa cambii* act:

The act is made on April 28, 1206 by the notary Gugliermo Kasinens.

"Enyruanos de Kozhino from Rheims acknowledges that he has received a loan (mutuo) in the non-specified amount of Genoa denars for an exchange (nomine cambii) from Imbertus de Ganella de Verselyato and Petrus de Verselyato, and promises to return 300 livres at the nearest fair in the Provins city either to both creditors, or to one of them, or to their legal representative. If the Provins coins lose their weight or quality, the debtor promises to pay to the creditors at the rate of 48 Provins sous for 1 Troyes semi-pound (that is to pay to them 12 and a half silver semi-pounds). The debtor promises to reimburse the creditors for all expenses and losses which they can incur if the debt is not paid in the specified terms. The debtor undertakes it with the security of all his property²⁷⁴."

The act text does not leave any doubt about the nature of the agreement—it is a question of an advance payment made in Genoa and to be returned at fair. The advance payment was not a simple loan. It was complicated by an exchange of Genoa coins into Provins coins. Such a combination of two operations—an exchange and credit—is quite characteristic for contracts of that time. However, such acts cannot be considered as a bill. A more proper name would be *instrumenta ex causa cambii*—a notarized exchange contract.

Another document, which was mentioned by many authors, dates to 1297:

"The banker Simon Rossi acknowledges that he has received 24 Genoa Lire and 32 denars, and his brother Wilhelm in Palermo should pay to the bearer of this document 8 marks of pure silver²⁷⁵."

This document already shows obvious bill operation attributes—different types of coins and their transfer from one place to another. Its other important feature is that it provided payment to a bearer (*qui dabit hanc cartam*).

Thus there are two main directions in the evolution of bill operations during XII–XIV centuries: 1) attempts to conceal an interest loan by an exchange contract; 2) a gradual replacement of the notarial bill act by the payment bill letter. A direct (from hand to hand) exchange of money (*cambium manuale*) did not require concluding a written document, as there was no need for a guaranteed fulfillment of the agreement, made on the spot. An exchange with transfer required a written contract, consisting of three documents:

- 1) A notarized act (*instrumentum ex causa cambii*): to the effect that a campsores undertook an obligation to pay in a certain place and during a certain time a specified amount in the specified currency (or in the currency chosen by the bearer of this act);
- 2) A note, issued to the person who deposited money, addressed to the payer and including an order to make payment to a person specified in it (*lettera di pagamento*—a payment letter).
- 3) An additional letter notifying the debtor about the required payment (*aviso*). Some authors consider this *aviso* letter as an integral element of the initial bill, though in our opinion it is not a characteristic feature of the initial bill type.

The bill sum was received against the payment letter. In the beginning, this letter did not contain any obligation, and if its owner failed to receive money in the certain place, the letter did not warrant him a recourse action, as it (contrary to a notarized act) was not a legal document²⁷⁶. A repayment requirement (in case of money non-receipt) had to be based on a notarized act.

When in the end of XIII century Champagne fairs were on the decline, Italian merchants opened branches and permanent representations in other cities. They also played an important role at fairs at Lyon. The changed trade methods affected bills and soon a notarial act (a receipt) was replaced by a simple bill letter, which completely confirmed a campsores's debt obligation. Thus it can be concluded that the bill (*lettera di cambium*) originated not from a notarized act (*instrumentum ex causa cambii*), but from a payment letter (*lettera di pagamento*), which was only an additional document at first. This letter became a prototype of the bill of exchange—a draft (*tratta*), which got a precise form during the next period of the history of bill operations—an epoch of fairs of XIV–XV centuries.

The first Genoa notaries' records dated 1155 testify that not one of their mentioned documents was a bill in the modern meaning. They comprised a notarized obligation to pay a certain sum of money with its transfer (*ex causa cambii*).

The above mentioned act of April 28, 1206 is distinctive by the non-specified sum of the advance payment, which was to be repaid at Champagne fairs. In this connection, R. de Roover assumes that the essence of this act consists of different exchange rates from which the campore derived benefit at the exchange operation. Several acts of XIII century prove it:

"The act of the notary Bartolomeo Fomari dated October 31, 1252.

According to this act, Rofredo Bramanzoni from Siene on his own behalf and on behalf of his partners (the Buonsingori company) states that after the exchange he has received (nomine cambii) from Gerardo Oltremare the sum of 1416 lire 13 sous 4 deniers in Genoa coins and promises to repay an equivalent—1000 Provins livres at the nearest Troyes fair by a certain term (ad rectum pagamentum). If this payment is not effected, the debtor undertakes to settle with the creditor in Genoa until Our Lady Day on February 2, 1253. In this case, 1000 Provins livres should be repaid in Genoa coins at the rate of 19 Genoa coins for 1 sou 12 deniers (Provins coins). According to the custom, the debtor waives different privileges, of which he could take advantage, and undertakes (on a security of all his property) to pay twice as much the borrowed sum if he does not pay money on the due date²⁷⁷.

This act sets the double agreement forms: an exchange of money with its transfer from Genoa to the Champagne fairs (to Provins) and a secondary exchange in the opposite direction (an exchange of Genoa coins into Provins coins, and then a reverse exchange of Provins coins into Genoa coins). A rate of Provins sous was specially decreased in Genoa and increased in Champagne, which enabled the money investor to realize a profit from its circulation between Genoa and the Champagne fairs.

The contract specifies the exchange rate (1416 lire 13 sous 4 deniers in Genoa coins are equal to 1000 Provins livres). Accordingly 1 Provins sou 12 deniers are equal to 17 Genoa deniers. A reverse exchange of Provins coins into Genoa coins was at the rate of 19 deniers. Thus the debtor, who received 17 deniers in Provins sous on October 31, 1252, promised to return 19 deniers in sous in three months or after February 2, 1253. The debtor's losses (and the creditor's profit) make 2 Genoa sous per each Provins sou due to different exchange rates and the second exchange—this difference was 2 deniers. It is simple to calculate the profit (1 livre had 20 sous, respectively 1000 Provins livres equaled 20 thousand sous). The sum of 1416 lire 13 sous 4 deniers corresponds to 1000 Provins livres at the rate of 17 deniers. At the rate of 19 deniers, 1000 livres make 1583 lire 6 sous 8 deniers and the difference, 166 lire 13 sous 4 deniers, is a profit of the exchange operation.

This contract shows that exchange operations generated a profit to persons who transferred their money from Genoa to the Champagne fairs and back. As a result, XIII-century bankers profited from an exchange operation. As the Church condemned

credit operations as usury, the profit in the given example was included in the money exchange rate, favorable to the creditor.

Later such operations were called a fictitious exchange and at first were blamed by theologians (Doctors of theology, canon and civil law, who were the authors of scholastic treatises and upheld the church law norms) and then by the Pope as a concealed loan. Everything was invented in such fictitious operation, including an exchange rate, which seldom corresponded to the real one. The true purpose of such an agreement was for it to be a profit-receiving loan, which is usury.

XII-XIII century acts testify that most lenders were from banking companies, and small businessmen very seldom participated in it. Their operations were mainly of the local or regional level and money was often exchanged in one place. The notary Apuliesia's records of 1221 and 1223 comprise forty three exchange contracts, out of which 41 relate to the local exchange and two exchange operations are made from one place to another. The same is seen in Ildibrandino's notarial acts: out of thirty two exchange contracts, registered from November 27, 1227 to April 2, 1229, twenty six relate to local exchange operations, three relate to an exchange from one place to another and three to the credit sale of precious metals²⁷⁸.

Genoa, Marseilles and Sien's notarial acts show that the money market was well arranged at fairs in the cities of Champagne (Provins, Troyes, etc.). Its exchange rates were determined by the demand and supply.

The exchange operation distribution was promoted by the circulation of many different coins, including Armenian and Cyprian, which is demonstrated by the following two documents:

"February 17, 1274

I, Restorius Cerrus, an inhabitant of Pisa, acknowledge to you, Berengario Addebrandini, an inhabitant of Pisa that I borrowed from you several new Armenian drams. For the exchange justification and correctness, I inform you that I promise to transfer and pay to you through your true messenger (or through my messenger) 44 Saracenic gold coins of relative weight by April 1 of the next year. In addition, I promise to pay a double damnification fee in case of the payment delay, as well as to recover losses and expenditure on your first demand, without witnesses and an oath."

"Famagusta, December 29, 1299

I received from you 1708 Byzantian albs and 17 Cyprian kharats in good condition and of correct weight, about which I inform you. As to an exchange I agree with you and undertake to pay to you through your true messenger (or through my messenger) 6157 new Armenian drams in good condition and of correct weight here, in Layatsio, in four nearest days, whereupon you can send your true messenger."

Further a payment delay caution in the amount of 10% charge and a double fee is mentioned²⁷⁹.

Let's consider in more detail the replacement of a notarial act by a simple bill letter. This tendency originated in the middle of XIII century, and its process can be restored by the available documents (though there are not many of them). An exchange contract comprised two documents: one of them was a debt acknowledgement and the second was a payment order letter. After some time, the payment order was made not by a simple letter but in a sealed one. It was mentioned in the notarial protest of a bill written in Brugge on March 30, 1330 on Nado Spigliati's demand to the representative of the Florentine company Acciaioli in Flanders:

"Spigliati states his readiness to pay a sum of 600 royal 24 gro (Flanders coin), equal to 1342 lire (in Genoa coins), which Nicolo Giciardini, Acciaioli Company's agent in Genoa, received as exchange from Antonieto Grimaldi. Spigliati (the debtor's representative) makes a protest, because Andriolo di Albari, the creditor's representative, refused to give money for payment. Acciaioli Company attributes expenses and losses to be caused by this refusal to the responsible opposite party"²⁸⁰.

This protest is set forth in the text of the letter, sent to Nado Spigliati through principals. The parties agreed not to send the original of the notarial act, which confirmed the Acciaioli Company's obligation for avoiding a loss of documents. Nado Spigliati received an order to pay Andriolo di Albari against a simple receipt, and inform Genoa about it for destroying the original copy of the act there.

This protest evidences the use of two documents: 1) *instrumentum ex causa cambii*, containing an exchange contract; 2) a letter, informing the payer about the subsequent payment. Thus the case in point is not a regular payment letter (*lettera di pagamento*), which was widely used by the Florentines and Sien already at the end of XIII century, but *instrumentum ex causa cambii*—the more conservative Genoese continued to use this document form till XIV century.

For better understanding of how these documents eventually formed the modern-day bill, it is necessary to consider that in XI-XIII centuries, many commercial agreements were oral, based on the parties' trust and honesty²⁸¹. In XII century, international trade was quite simple; dealers personally accompanied their goods and the ships, so import was closely connected with export. In such conditions, it was seldom necessary to exchange money and transfer it from one place to another. Contracts for the transfer of money to another place were also rare in the Genoa notaries' records. The situation was different by the middle of XIII century, and records about money transfer contracts became regular. This financial operation development was evidently promoted by the appearance of rich merchants in other countries.

Thus it can be concluded that notaries treated *instrumentum ex causa cambii* as a promise, in conformity with which the debtor, who borrowed a certain sum of money for an exchange and undertook to repay it in another place. In R. de Roover's opinion, a notarial form of such debt record was only an auxiliary element, which did not change the nature of the contract itself. He believed that German lawyers of XIX century, who studied the bill history, overestimated formal questions, whereas

XVII-century cambists offered a more adequate approach, according to which a contract did not have a well-defined form was made in the form of a notarial act, an act with a personal stamp or in the form of a simple record.

The bill circulation development was also promoted by the general literacy growth, which allowed a dealer to more frequently dispense notarial services. In addition to a notarial act, registration took time and the contracting parties and their witnesses had to attend it. Moreover, it was difficult to renew a notarial act in case of its loss. All of these inconveniences resulted in the gradual insignificance of a notarized receipt. Dealers found an optimal way not requiring a notarial act conclusion—it was replaced by a bill letter, which gradually acquired the bill form. At first it took place in Tuscan cities, where innovations were introduced more quickly, than in Genoa and Venice, which adhered to traditions for a longer period and during XIV century continued to use the services of notaries, who traditionally made these acts in Latin.

A debt document dated 1339 is a classical example of the bill:

*"Bartalus and Co in Pisa. In the name of Lord Amin.
Bartalus and Co sends its greetings to Barna from Luhi and Co, Avignon.*

*Pay as per this letter to Landuccio Bassadragi and Co from Luhi on
November 20, 1339 312 gold guldens (which we today received from Tacredo
Bonacimunti and Co, having calculated 4 % in their favour) and pay this sum
to our account.*

It is issued on October 5, 1339".

According to G. F. Shershenevich this act does not have transfer letter attributes and it can be considered as a version of a simple bill²⁸².

It is disputable which bill type appeared earlier—a promissory note or a bill of exchange. In the beginning, a bill supposed money exchange which is confirmed by its name (Latin *cambium*, German *Wechsel*). The simplest kind of such exchange was made on the spot, when a campore gave at once the required sum in another coin. Such direct exchange from hand to hand on the spot had a respective name—*cambium manuale* (or *Handwechsel* in German). The second kind of exchange, or *cambium per litteras*, provided for money transfer and payment of the required sum in another city or country, and possibly in another coin. As the place of issue and receipt was different, it received the name *distantia loci*. Such an exchange was used for the Papal tithe²⁸³.

Researchers of XIX century to the beginning of XX century did not consider a promissory note as an initial bill form. They believed that it was a transfer note, that is a payment order, was sent to the third party. In particular, this opinion was shared by D. I. Meyer, who believed that the bill appeared as a *transfer note*, and that it was difficult to understand in general, whence the wording "I should pay," appeared in the bill. The bill circulation was caused by a safe remittance requirement, and if a person gave money to a banker for its receipt in another place, another person's payment

was supposed as it was hard to imagine that the banker would himself go the money disbursement place. It would seem that the phrasing: "*you should settle my bill*" should be kept in the bill.

Regarding the promissory note appearance, it can be explained by the intention to execute usual debt obligations in the bill form (protected by the bill severity). Therefore, the debt documents which did not relate to money transfer began to also be called the bill²⁸⁴.

V. A. Udintsev pointed out that in view of the research of L. Goldschmidt, who analyzed the Genoa documents of XII century from the archive of the notary Giovanni Scriba²⁸⁵, the assumption that the bill of exchange was the initial bill must be superceded by considering a promissory note in the form of a *chirographum*, which was widely circulated and used for loans and coin exchange, as an initial bill liability²⁸⁶. L. Goldschmidt noted that neither the bill of exchange nor the simple bill of exchange (the so-called *kommandit* bill) were the initial bill form (the bill letter). It was a promissory note—a bill letter as a simple payment obligation, which could be called a domiciled bill in XIX century²⁸⁷.

In some authors' opinions, two kinds of bills of exchange existed at that time: an ordinary money transfer letter, which in itself was not yet a bill, and a later document, an independent bill letter, which contained a drawee's obligations to pay a specified amount. The first kind of the bill of exchange appeared in XIII century, and the second was formed in XV century, in consequence of which an auxiliary document became unnecessary²⁸⁸.

The most ancient bill documents contain forms of promissory notes (*carta di cambio*), which are not payment orders, but promises to pay. These bills were self issued, and in the beginning they were paid by the same person who received money, because a campsores or a banker (not a merchant) brought money for his needs (for example to a fair) and carried out exchange operations there, receiving money from his creditors or from his sold goods in another place. Since a campsores or a banker took a risk of money transfer, he gained a profit from this operation as interest.

Beginning in XIII century, a new provision appeared in the bill text. It specified that payment should be made not by a campsores himself, but by his authorized representative, who was in the place of paying. A special letter (*littera di pagamento*), called *tracta* (unlike the bill, named *carta*), was sent for notifying this person to pay, from which the name of the bill of exchange originated. This letter was an addition to the bill, because the bill was obligatory for payment and the letter *littera di pagamento* only informed about its demand. Eventually such letters developed into bills of exchange, and the first document (a promissory note) became superfluous at payments from one place to another²⁸⁹.

Obviously there was an initial draft form, an ordinary money remittance, but with the use of *cambium* (not yet a bill document in the modern meaning, but a simple description of the operation essence), which should be distinguished from the later draft, which became a bill document in the legal aspect. L. Goldschmidt considered the initial bill

form to be a simple domiciled bill with active (and in most cases—with passive) order clauses. By means of such clauses, the drawer assumed an obligation towards the bill accepting person (or to the person who would be so named) to pay the bill's specified amount independently or to contribute to its payment by the third party²⁹⁰.

L. Goldschmidt's concept was criticized by A. Schaube, who believed that a simple bill and a bill of exchange appeared independently from each other. He substantiated his opinion by payment orders in letters, which were exchanged by different local companies or sent to the agents of the Italian companies to other cities and countries. Later, such payment orders developed from commercial letters into separate documents, submitted personally to the creditor. In A. Schaube's opinion, this was the way the bill was created, which not only admitted the receipt of a certain amount of money, but also envisaged an obligation of its payment. The draft became equally valid as a promissory note, and started to supersede it from its circulation. It was caused by the increased trade activity of the Italian merchants and an extensive network of their representations²⁹¹.

In some of his other works, A. Schaube admitted that XIII-century bills of exchange were really caused by the assumed obligation of payment to the creditor, though this obligation was expressed not in the written form of the promissory note (as L. Goldschmidt considered), but in the form of an oral promise under the oath. In particular, A. Schaube mentioned examples of the drafts, which were issued by the empress of the Latin Empire Maria in 1249 in the name of the queen Blanca, who had to pay the specified amount to the Tuscan merchants²⁹². Credit letters, which appeared in the beginning of XIII century (a king, bishop or baron transferred by them a certain amount of money to the knights, who were at his service), were not yet considered as bills either by L. Goldschmidt or A. Schaube. The credit letter text had such formulation:

"The credit amount shall be returned to any merchant or another person who gave a certain sum to this knight at the presentation of this credit letter with payment confirmation²⁹³."

In A. Schaube's opinion, payment was confirmed by a draft, which was enclosed with the credit letter and contained a request to the person who issued the credit letter to return the money. A draft was used instead of a receipt because the sum to be returned considerably exceeded the granted amount due to the interest. In order to avoid the prohibition of interest-bearing loans, the given sum was not specified and a receipt was not made. Instead, a document was issued for the amount, already including the interest. As a matter of fact, a king allowed merchants by this letter to write out a bill for a certain sum on him and undertook to pay it. Thus in this case, one can presuppose the existence of a promissory note (a payment obligation) on the basis of which a bill of exchange (a paid amount return request) was made²⁹⁴.

T. Guhl also believed that the beginning of the bill history (XII-XV centuries) evidenced the first appearance of a promissory note, in which an abstract payment

obligation was legally important and the payment place was insignificant—it could be any locality other than the issuance place of the bill²⁹⁵. A similar point of view was shared by A. Dolifski, who pointed out that a draft, valued on a person, is a later bill form²⁹⁶.

M. Weber was of another opinion. He believed that a typical medieval bill consisted of two separate documents. The first, *litera aperta*, was analogous to a modern promissory note with the payment place indication (merchant № 1 in Genoa promised to pay to merchant № 2 in Barcelona a specified sum on a certain day through person № 3, the debtor of person № 1). The second document, *litera clausa* (the draft predecessor), notified the drawer that he will have to settle the bill on account of his creditor. The first document was to be notarized and the second one was a simple letter. According to M. Weber the first document gradually became unnecessary (for avoiding notarial registration expenses) and a draft acquired its modern meaning²⁹⁷.

In A. F. Fedorov's opinion, such drafts determined, on the one hand, relations between a person who issued it and a person authorized to effect payment; on the other hand, it was the basis for the realization of the bill creditor's rights. In the first case, the bill of exchange was called the draft (*tracta*) and in the second case, remittance (*remissa*)²⁹⁸.

V. A. Belov studied the priority of the promissory note and the bill of exchange among modern researchers. He believed that the promissory note was the first to appear²⁹⁹. The researcher considers that peoples with more developed trade (Italy, France and England) used different concepts for the definition of the promissory note and the bill of exchange, while peoples with less developed trade used one concept for the definition of both bill types. The author explains that all peoples had their own financial tool, which was actually similar to a promissory note. The bill of exchange resulted from the developed trade and credit, when correspondent relations were established between changers from different countries. If trade did not become so developed, a promissory note did not transform into a bill of exchange³⁰⁰.

Another idea was expressed by R. Mueller in the monography, dedicated to the evolution of the financial market of Venice. The initial bill type, which he named *cambium contract*, or an exchange contract, provided payment in a definite term, which depended on the distance between two places. In the beginning of XV century, it took twenty days to transfer money from Venice to Florence, two months to Brugge and three months to London. Such fixed term inconvenience gradually caused the practice of the payment term definition on the basis of the parties' approval. The bill of exchange appeared, whose profit gain mechanism consisted in that the greater the term until the bill's settlement, the greater the discount for its purchase³⁰¹. The bill of exchange began to be used more frequently for financial operations rather than for merchandise ones. Merchants knew where to take the optimal credit, and used bills of exchange for this purpose³⁰².

The study of the priority of the promissory note or the bill of exchange was influenced by the modernization of economic life, typical of many XIX-century

researchers. As W. Endemann noted, researchers often used later legal concepts and ideas for ancient phenomena. The Roman law was interpreted with the use of complicated legal constructs, about which the Roman lawyers had not the slightest idea. The same relates to the bill's history. For example, the most ancient bill forms are assigned with functions, which appeared much later. Therefore it becomes impossible to understand an actual situation, because the researchers' conclusions are quite far from reality³⁰³. A. Sayous also considered that payment obligations (particularly in Genoa of XII century), which provided the participation of the authorized representative, can suggest promissory notes. However, this is only a distant similarity, and the debt repayment in another place generally required personal relations³⁰⁴.

In XII-XIV centuries when the Italian type bill originated, there concepts of "a promissory note" and "a bill of exchange" did not exist, because at that time documents did not yet have a developed form. Taking into account that remittance expressions were frequently fictitious (for avoiding the Church's usurious interest prohibitions), the discussion about the priority of the promissory note or the bill of exchange loses sense, because these concepts appeared much later.

Luca Pacioli's "Treatise about the Bill," written in 1494, presents the following classification of four types of operations, which related to the bill in XV century:

1. *Cambio minuto*—an exchange of money;
2. *Cambio reale*—a bill letter (a draft), *lettera di cambio*;
3. *Cambio secco*—the "dry" bill (used not for the sea transportation, but for the storage with the creditor; it was made only in one copy (*solo*). Pacioli considered this bill type legal, but gave numerous cautions in his treatise);
4. *Cambio fittizio*—the redraft predecessor (*ritratta*).

L. Pacioli's classification is interesting because it shows that other bill types existed in XV century, which were not promissory notes and or bills of exchange. L. Pacioli's treatise has the following sample of *lettera di cambio*, where the drawer was Donato and the payee, Francesco; the author estimated the bill profitability at the rate of 2-3% of the bill amount; the bill operation profitability reached 15% a year:

"1494, August 9, Venice.

As per this present first bill copy pay to Ludwig de Francesco from Fabriano and Co. 100 Neapolitan gold ounces, which you will be able to receive in the same quantity at the next fair in Fuligni from respected Donato, the son of Priamo. Charge this sum to our account.

Let the God bless you.

I subscribe below,

Yours Paganino de Paganini from Brescia"³⁰⁵.

Though some short and simplified formulas of debt obligations in the Genoa notaries' books really look like promissory notes, their identification is the modernization, and it is more correct to speak about the initial bill type. Regarding the credit character of the initial bill type, views of different authors do not coincide. G. F. Shershenevich believes that the initial bill type had no credit aspect at all and its purpose was only money remittance. The payment term differed from the issuance term only by the time required for the letter and receipt transportation, which, in its turn, depended on the distance between cities or countries and could not be long³⁰⁶.

In B. Movchanovsky's opinion, in XIII century (and the more so in XII century), the initial bill type was used only for money transfer and it further developed at medieval fairs, where notes and receipts of Italian campsors became the means of payment and the credit tool³⁰⁷.

S. M. Barats pointed out that a bill initially had a credit function. It was used not only for money remittance from one country to another, but also for the credit receipt and a debt settlement³⁰⁸. These notarial act samples show that a credit function was to a certain extent common to almost all ancient exchange operations. Moreover, exchange acts were often used only for concealing a credit function due to the Church's negative attitude to all usurious evidence. At first, it was forbidden to perform exchange operations with money disbursement in the same place. As a result, bankers began to use a bill for gaining a remittance profit. Later, when this form was also criticized by the church, they began to include an interest profit in the artificially overvalued exchange rate of different currencies³⁰⁹.

Thus it can be concluded that the first bills did not yet comprise an order and were debt obligations in the form of a notarized act, to which a payment letter of auxiliary character was attached. As a rule, these letters were certified by the seal of the company or a separate banker. Subsequently, the letters and not notarized receipts gave origin to the bill in its modern sense.

It is worth distinguishing the initial bill period in the history of the bill, because bill operations were already widespread. But as W. Endemann justly noted, a bill did not yet have a legal reasoning³¹⁰.

2.3

Fairs and Bill Operations

MEDIEVAL FAIRS WITH their international financial operations promoted further bill circulation. As the land trade declined due to numerous dangers of transporting goods, fairs became the main centers of large-scale international commodity-money circulation. Though a great number of people participated in medieval fairs, they were primarily wholesale markets for large merchants, who improved the mechanism of their activity. As credit became especially important at fairs, fairs played a significant role in the development of bill operations, becoming a center of the new European economic space for more than a century, influencing its formation and further development.

A large trade turnover and a significant volume of settlement operations required a safe profit remittance. It became the precondition of a wide use of bills, by means of which almost all trade agreements were carried out. Though bills, issued at fairs (or used for payment at fairs), existed before, a certain period in the bill operation history (which, according to W. Endemann began from XVI century³¹¹) is often called an epoch of the fair bill.

The first fairs appeared long ago. There is evidence that they were held in Troyes during the Roman times, and in Lyon they commenced around 172 A.D.³¹². Despite such ancient origins, fairs, the revival of which is observed in Europe since XI century, were a true and dynamic tool of the medieval trade. Their main function consisted of establishing new trade relations.

Fairs reappeared due to the formation of the European economic space during X-XI centuries. The following factors were the pre-conditions of this space origin: 1) the development of the economy in Italy with its port trade cities (Genoa and Venice); 2) the appearance of a new economic zone with the developed craft and trade in the estuaries of Rhine, Main and Schelde in Germany and Holland; 3) an establishment of relations between the northern and southern regions of the European economic space in French fairs in the cities of Troyes, Provins, Bar-sur-Aube and Lagny, located in the Champagne county.

Fairs in Champagne became international from 1130-1160, some time after the beginning of the first Crusade (1095). They were intermediaries between England, a wool manufacturer, and Flanders, where this wool was processed, on one hand, and Italy, the center of trade with the East, on the other hand. At these fairs, spices, silk and other Levant goods were traded for cloth, made by Seine and Marne handicraftsmen.

Champagne fairs in Troyes, Provins, Bar-sur-Aube and Lagny were held in different months (up to six fairs a year). In addition, many villages and towns also had plenty of small fairs with the same functions of great international fairs—first in Champagne, later in Lyon, Medina del Campo and Frankfurt am Main. From XV century, an especially important role was played by Frankfurt fairs, where economic relations were established between Central Europe and the fairs in Antwerp and Bergen-op-Zoom. Later, from the beginning of XVI century, fairs at Lyon became more influential. In 1462, the king of France granted them numerous privileges in the hope that they would surpass the glory of Geneva fairs. At the same time, a significant role was played by Spanish fairs in Castile, where plenty of bill agreements were concluded. The last period of the rise of fairs was connected with Bisenzone fairs, arranged by merchants and bankers from Genoa, where large money operations were performed, including payments and loans using bills.

In the middle of XIV century, after a long period of the economic rise, a recession began. It continued from 1350 until 1450, and led to the decline of Champagne fairs. It was caused by a rapid development of European cities, which became constantly operating trade centers unlike regularly held fairs. The Champagne fair decline caused a general decrease of the economic activity not only in France, but also in all Europe. The change of the European economic space center led to lesser goods at fairs and payment delays from one fair to another (the crediting mechanism essence). Florentine merchants transferred the center of their activity to Lyon from 1298. Even though in XIII century, the state treasury's fair profits increased from 6 thousand up to 8 thousand livres, in the beginning of XIV century, it sharply decreased down to 1700 livres. In 1340, it grew to 2630 livres, much lower than the initial level.

In XIV century, the center of the European economic space once moved to Italy, where not only crafts, but also the financial-banking activity rose. The Genoese mastered new sea routes, and Italy associated with England, instead of France, in its economic interests. New sea trade routes between Genoa and London, Southampton

and Brugge, which were more convenient than land routes, reduced the former significance of the trade routes through France to French fairs. For a rather long time, France found itself isolated from the main direction of the European capitalism development³¹³.

However soon the Italian trade cities began to compete, and at the end of XI century, Venice won in this struggle. This victory became possible not due to the banking development in Venice, but mainly because of trade relations of Venetian merchants with Eastern Europe, the Black Sea region, the Great Silk road and also with Levant and Egypt, through which Venetians took out pepper. They took spices from the countries of the Indian Ocean and gold sand from Niger.

Florentines had strong positions in Lyon, where in 1548 they owned 37 large banking houses. In 1537, a fair was arranged in Besançon through the intermediary of Florentines. For the first time, it was a bill fair and not a commodity one³¹⁴.

The main preconditions of the bill fair appearance are considered to be geographical discoveries and an increased flow of precious metals taken out of colonies. The sums of financial operations considerably grew and merchants, trying to avoid the transportation of large sums, started to use debt documents. Bill fairs appeared because bill operations ceased to be the commodity circulation auxiliary means, and became an independent direction of the commercial activity: it was at the fair that campsoures met for mutual repayment of debt obligations.

A change of the economic situation was reflected by the appearance in XVI century of the normative documents dedicated to bill operations. Some issues of these operations were already considered in Louis XI's edict (1462), and the detailed rules of bill operations were defined in the Milan Constitutions (1541), the Constitution of Naples (1562), numerous laws of Venice and Bergamo, in Bologna charters (1569) approved by the Pope, and also in Charles V's decree on trade in Antwerp (1578). The Besançon's fair charters (1579) were the most important documents, which described the order of holding fairs and performing bill operations.

Let's dwell upon the features of financial fairs, which are known as the Besançon's ones. The economic life of the French city of Besançon began to revive in XVI century, when in 1534 the Genoa merchants and bankers settled there. In their time, they played a leading role in fairs at Lyon, being creditors of the French government. However in 1528, the king of France ordered to expel the Italian bankers from Lyon. The king demanded that they should give credits only to the French crown, which thus could have an unlimited access to the international financial markets through fairs at Lyon. Such policies did not suit the Italian bankers, who wanted to retain their financial operation profits. In 1535, they arranged fairs at Besançon, which was located not far from Lyon (180 km) and Italy (400 km), but in the territory of the Hapsburg's empire. On one hand the French king's power did not reach them, while on the other hand, they remained near Lyon, the large economic center of Europe, equally remote both from the Mediterranean Sea and Antwerp, the importance of which significantly increased in Northern Europe by then.

Lyon was not completely left by dealers, and its market still functioned for a rather long period of time. The fair at Besançon became the main place of bill operations, because it had commercial contacts with all large trade centers in Italy, Spain, the Netherlands, France and Germany. According to W. Endemann, the fair at Besançon was the central financial stock exchange of the West European trade world. The king Charles V granted large authorities and privileges to the Genoese, the founders of the fair at Besançon, and it was Genoa which determined the future of the bill. The volume of operations at one quarterly fair reached 16 million ducats, and some bills were often issued for very large sums. Bills became a profit-making item, and rich Genoa negotiators favorably invested money in bill operations³¹⁵.

In 1568, the Genoa bankers left Besançon, and from that moment financial fairs became, according to I. Rutenburg, migratory³¹⁶. These fairs were transferred to Poligny, then to Chambéry, Pontarlier and other cities, keeping relations with Lyon. However, in 1579, their center was moved to the Italian city Piacenza, located in the territory of the Parma duchy that was already a resolute break of all contacts with Lyon. Nevertheless, these fairs were traditionally called 'Besançon' (*Bisenzone*) and they were held until 1621. The Genoa bankers were the real owners of these fairs (and through them—of the financial markets of Europe). The Genoa financial power was supported by the capital of the San Giorgio bank, which operated with the Spanish gold imported from South America. The Genoa bankers monopolized the distribution of the flows of precious metals from South America, because the Genoa San Giorgio bank provided the repayment for the foreign debts of Spain.

The Genoa financial partners—Venice, Milan and the Tuscan kingdom—could not affect the Genoa domination, because Bisenzone fairs were headed by the consul and two advisers, appointed by the Genoa senate. The fair administration's decision was binding for 18 large cities of Italy—Ancona, Bari, Bologna, Bergamo, Bolzano, Venice, Genoa, Lecce, Livorno, Lucca, Mantua, Messina, Milan, Naples, Palermo, Prato, Rome, Florence, seven cities of Spain, three German cities (including Frankfurt am Main) and also Lyon, London, Lisbon, Amsterdam and Vienna. Thus Bisenzone fairs became an all-European financial organization under the control of Genoa.

The increased significance of Genoa, which became the leading center of international currency payments, was promoted not only by a long experience of the Genoa bankers, but also by a favorable international situation, in particular, the aggravating economic decline in feudal Spain³¹⁷.

The Bisenzone fair prosperity coincided with the rise of Castilian fairs, which also dealt with the import of silver from South America. Fairs in Castile were held in Medina del Campo, Villalón and Rioseco. Their prime was in 1530–1550, when Medina del Campo became known to all Europe in connection with a lot of silver imported by Spain from the New World through the Seville port. Fair-to-fair deposits, six-month loans and internal Seville bills were important at these fairs. There were many such bills, because they were forms of the credit paid at large fairs. Many bills

issued in other European cities were in circulation at Castile fairs. However, after 1534, fair-to-fair deposits and internal Seville bills were prosecuted, as they were considered interest-bearing loans. Therefore, by the end of the 1540s, internal exchange bills were prohibited at Castile fairs that negatively affected mechanisms of financing the export of silver. The deepening confrontation of Spain and France caused a decline of Castile fairs in the second half of XVI century.³¹⁸

International bill fairs, at which non-cash operations prevailed, took place four times a year. On average, they were attended by 60 *banchieri di conto*, among whom there were the Genoese, Milans and Florentines. These fairs were similar to a select club, which could be joined at the unanimous consent of all participants and the mortgage payment of 4 thousand escudos. The *cambiatori*, exchange merchants, were permitted to fairs. After the payment of 2 thousand escudos, *cambiatori* got the right to participate in fairs, where they showed their balance books. The *trattanti*, who were brokers and representatives of certain companies, belonged to the third type of participants³¹⁹.

On the first day of the payment period, bankers accepted bills, protested them or themselves accepted protests against the presented bills. As mutual debt payments were made at fairs, every bill broker brought his registration book (*scartafaccio bilan*), in which his own obligations and his debtors' bills were recorded. A form of this book, its arrangement of some accounts and headings were defined by the Supreme Court of Genoa. Campsores gathered in the appointed place with these books, and in the consul's presence, each of them named bills, which he had brought to the fair for payment. If a debtor or his representative was ready to settle the bill, then the bill was considered to be accepted at the fair. Thus campsores were not actually required to present bills, which were accepted by entering the names of both operation participants in the campsores' registration books. A campsores stroke a balance based on these records and submitted it to the fair administration, which checked its reliability. Until that moment, a campsores could change his records, but after drawing up the balance, the records came into effect³²⁰.

Multilateral bill payments began after the acknowledgement of the correctness of the records. A practice of settling bills not by money, but by other bills gradually developed at large fairs with many persons, engaged in bill operations. This method was named *scontratia* ([Latin *scontro*—a transfer). In this case, huge mutual debts were usually repaid, after which small amounts remained in assets or liabilities. If a certain sum was not offset after a purchase and sale of bills, it could be covered by cash. A creditor frequently agreed to accept a bill of exchange from a debtor at another fair³²¹. In the beginning of XVI century, non-cash agreements for 3–4 million ecus (12–16 million a year) were concluded at each fair in Piacenza on the basis of mutual bill debt payments and *ricorsa* agreements. In 1630, this volume increased to 30 million a year³²².

Regular, but not simultaneous fairs promoted money loans and payments, including the use of the bill, because most merchants did not pay in cash. "Payment"

meetings of merchants took place in the last week of the fair, the so-called payment week. At that time, a lot of bills were presented for payment. Fairs were set up as places for debt repayment and, as F. Brodel noted, through the clearing system in Lyon, it was possible to control multiple millions with 100 thousand gold ecus. The main debt was covered by a promise to pay. That led to a wide use of bills, which became in the Christian world, where the interest was prohibited by the Church, the most frequent credit form³²³.

On the second day of the fair, the consul together with authorized bankers determined a bill rate. In Raphael de Turri's opinion, it was the most important fair operation, the same as mutual repayment of bill debts. These two operations became possible owing to the use of a conventional money unit, which in the beginning was named scudo: 65 scudos made a conventional mark—ecu de mark³²⁴.

The idea of using a conventional money unit arose in the beginning of XV century at fairs in Geneva, through which the Italian export was carried out in the Alpine region. These fairs were held on the basis of a stable monetary unit—gold ecus (*ecu d'or*), which had the crown image and were minted by Duke Savojsky. It facilitated settlements at the end of the fair. All bills of exchange, made or paid in Geneva, were also issued in ecu.

Initially, 64 gold ecus were equal to one gold mark (*marc d'or*, 245 g of gold) at Geneva fairs, but as coins became damaged and lighter coins were minted in the next duchies and counties, the gold mark equaled already 66 ecus and the Savoy original gold ecu gradually ceased to be circulated³²⁵. Gold ecus with the image of the sun (*ecu d'or au soleil*) were the main currency unit at fairs at Lyon; 65 gold "ecu with the sun" corresponded to one gold mark of 245 g.

In the first half of XVI century, the significance of fairs at Lyon especially increased, as they gave loans to the French kings, and Lyon became an important center of international payments and bill operations. According to the contemporaries in the middle of XVI century, 1 million livres were circulated daily at these fairs, and not one sou was spent in cash³²⁶. However, there were 10 small cash trading merchants per one rich merchant, who used credit obligations and carried out bill operations (such merchants traded, as a rule, in fabrics, spices, pharmaceuticals), because available goods with the cost of 1 thousand ecus allowed them to earn much more than 10 thousand ecus invested in bill operations. Although commodity and cash operations brought large profits, these operations were commercially more risky.

A system of the uniform stable currency equivalent ecu de mark was gradually introduced at Geneva and fairs at Lyon, because the gold mark (it was equal to a half of the pound of gold) differed by weight in various cities. In Troyes, its weight equaled 234.5 g of gold, in Florence—226 g, in Castile—230 g. Though gold ecus were widely used at XV-century fairs, both old ecus of 1/64-mark weight and new ones of 1/66 of mark simultaneously existed. In the beginning of XV century, Florentine bankers

offered a new type of ecu with the weight of 1/65 of mark, which coincided in its cost with a real coin—the gold “ecu with the sun” of fairs at Lyon.

The creation of a conventional payment unit was important because in XVI-century Europe, the available cash was insufficient for fully servicing the annual commodity circulation. In XVI century, American gold and silver was imported mainly throughout the Mediterranean and Italy had enough money. Before the discovery of America, 5 thousand tons of gold and 60 thousand tons of silver were in circulation in Europe. In over 150 years, from XVI to the beginning of XVII centuries, 180 tons of gold and 16 thousand tons of silver were imported into Europe. American silver got to Europe not only through Lisbon and Seville, but also through Antwerp, which promoted its economic role in Northern Europe³²⁷. This circumstance, alongside with a reduced supply of precious metals from the American colonies in the beginning of XVII century, became an economic precondition of an increasing requirement for bill operations at fairs. After 1631, when Bisenzone fairs, controlled by the Genoese, began to decline and a flow of precious metals through Genoa became much lower, the significance of ecu de mark as a conventional money unit for payments at fairs also decreased.

The use of conventional money units at absolutely altered the essence of a bill compared to a usual, non-exhibition bill, which was not the cost-definition means³²⁸. Therefore, bill fairs in Piacenza can be considered the beginning of an epoch of securities. Certainly, the superiority in it belonged to Genoa, as Venetian bankers were conservative in this issue and constantly complained about the flow of credit papers and the number of both legal and illegal operations with them.

The prosperity of fairs, in particular the circulation of money and credits between fairs, contributed to further economic development. However, in the second half of XVI century, European fairs fell into decay. Genoa bankers with their fairs in Piacenza succeeded to shortly slow down this process, and with the endorsement distribution, an epoch of fairs in the bill history came to an end.

Let's return to the characteristics of bill operations at fairs. Medieval fairs in Champagne, Lyon and Besançon substantially promoted the distribution of the Italian type bill, because it was Italian merchants and bankers who played a leading role in the European trade at that time. However, the initial Italian bill attained new features at fairs. It related to bills issued in one place with payment at a fair in another place; issued at a fair with payment in another place, and also bills issued at a fair with payment in the same place, but at the next fair. In general, bills were so prevalent at fairs that the fairs were even accused of not being for trade, but instead for meeting cambists, who by one record “repaid the debts and credits of all Europe”³²⁹.

This allows one to single out the exhibition bill, which differed from the initial bill not only by its indication of a fair as the place of issuance or payment and the exact payment date, but also by some other features (which later became the important attributes of the bill), in particular the bill's rigor, acceptance and protest³³⁰.

Below is an example of a bill, characteristic for an epoch of fairs:

"As per this first letter (a bill) pay to Luca de Goro 45 pounds on October, 9 for the currency received here from Mazio Reno; in due time (on time) pay them and place to my and firm's account. Let the Christ spare you. Bonromeo de Bonromei greets you from Milan.

March, 9, 1395

An address is indicated on the bill back:

"To Alexander de Bonromei and Dominico de Andrea in Venice.

Prima (first), for 45 pounds."

This bill was a Venice-drawn draft. The drawer was Bonromeo de Bonromei and a company in Milan; the drawee was the firm Alexander de Bonromei and Dominico de Andrea in Venice. The name of one firm is specified in the signature, and the other in the address. The payee was Mazio Reno; the bearer, Luca de Goro. The names of these last are stated in the bill text³³¹.

At that time, a bill required the participation of four people. Two persons took part in its drawing up and issuance, and the other two in its acceptance and payment. The drawer and the payee participated in the bill issuance—one issued a bill and the other paid for the bill or lodged a credit in some currency. The drawer's name is placed under the bill text as signature and the payee's name was in the bill text as the name of the person, who paid money for the bill (or the person, to whom the credit was granted on the bill). The other two persons took part in the bill operation—one presented the bill for payment and the other made payment. The bearer's name was stated in the bill text as the name of the person, who as a creditor would submit the bill for payment and receive it; the name of the second person (a drawer)—as the bill address, drawn up in the usual letter from.

Acceptance (a drawer's acknowledgement to accept a bill and make payment) appeared at fairs, because a merchant who arrived at a fair knew whether he could receive money on his bills. A bill was more often drawn without confidence that a debtor would acknowledge his debt, because it was not always possible to value a bill on the partner in another city or country. In such cases, money had to be remitted to another trade company. This resulted in the gradual development of a procedure of a bill acceptance for payment—acceptance (from Latin *accipete*—to accept). It was at fairs that acceptance became an independent act separated from the payment act³³². First, it had a form of a payer's public acknowledgement (at the general meeting of merchants and bankers) of his consent to accept the bill for payment, after which the holder could plan a purchase of goods. Thus a special document was made,

but later this practice was rejected and the payer began to use a bill inscription (at first lengthy and then laconic), which expressed his consent to pay (Italian *vista e accetta*)³³³. Acceptance could be oral in the presence of witnesses. The lists of bills (to be presented for acceptance at a given fair) were made at large fairs to simplify the procedure. The bills were marked as accepted just after the fair's opening, as they were not considered accepted otherwise³³⁴.

According to J. Savary, bills were accepted and issued on the basis of oral agreements, and from 1667, acceptance was made only in the written form. Bankers and merchants used special books for bill operation records, *bilan des acceptations*. In the books, they recorded all bills, issued in their name and presented to them by the drawers. If they accepted a bill, then a criss-cross was put opposite a corresponding record. If a bill raised doubts and its acceptance required consideration, the letter V (*Vu*) was put opposite a corresponding record in the book. If a bill was not accepted, the letters SP (*sous protest*) were put, and the holder had to protest this bill three days after the trade termination.

On the third day of the fair, the price of bills was established by an agreement with foreign merchants. On the sixth day, merchants stated their records in *bilan des acceptations*. After that, mutual settlements commenced, which continued until the fair ended³³⁵.

The acceptance distribution led to a separate acceptor's responsibility, connected with his obligation to settle a bill, because a refusal to pay (irrespective of circumstances, even objective and proved) could infringe many agreements at the fair. Therefore, all its participants were interested in that the acceptance is acknowledged irreversible, and accordingly, the self-sufficiency of an acceptor's obligation.

In case of a drawee's refusal of the bill acceptance or other reasons of non-acceptance (for example, a drawee's absence in the bill settlement place), the third party intermediary was allowed, the so-called honor acceptance, which could be made both on the part of the non-authorized persons, who were not specified in the bill, and on the part of a drawee or a representative.

An economic role of medieval fairs promoted a special significance of the strict fulfillment of bill obligations—the bill rigor (*rigor cambialis*), the essence of which consisted in the terms of the bill case hearing by fair courts and also in severe measures, was used towards bill debtors. Even the development of the above specific features of bill operations did not require a separate procedure of the bill obligation claim proceeding (there was no need in it), as bills were in public trust (*publica fide*). Bill debts were quickly and strictly collected to the creditors' interests, because at fairs, merchants and campsores had special corporate jurisdiction, which provided a rapid collection with no objections from a debtor.

Merchants' interests in precise fulfillment of all bill operations led to the opening of fair liquidation chambers, which was where they could settle bills. Special fair courts were set up, which determined the rules of quick and severe bill debt recovery. In case of non-payments, debtors were detained under the court decision and their

property was subject to confiscation for payment with creditors. Some fairs used such methods to punish debtors, as prohibition to take part in fair operations. The government established strict bill circulation laws (that, in particular, were reflected in the time of the bill case hearing in court and also in the severity of compulsion measures, applied to debtors).

Fairs contributed to the appearance of such important bill features, as acceptance, protest and bill rigor. In V. A. Belov's opinion, bill operations at fairs, protected by the legislation and merchants themselves, promoted the development of commodity credit and its transition to such a stage when a bill ceased to be a tool of correspondent relations exclusively between campsore. The latter could then address it not only to another campsore, but also to a merchant, the campsore's debtor, who intended to arrive at a fair³³⁶. The bill's indisputable status, supported by its rigor customs, made bill operations surpass the fair limits and become means of credit.

The fair trade turnover expanded the functions of the bill and its economic importance; it began to be used not only for money remittance, but also for non-cash settlements. Bill payments began to be utilized at commercial agreements, which made non-cash large financial operations possible. The bill issuance time and its payment gradually parted, and thus developed the bill's credit function.

Significant advantages of the bill compared to other debt obligation forms led to most debt obligations being drawn in the form of a bill. An epoch of geographical discoveries and the development of trade with new colonies played a role in this, particularly in America, as the outfit of one or more ships on long-term sea voyages for such exotic goods as West Indies spices required large loans, which supposed a considerable lender's interest profit. In addition to concealing such bill essence, it was usually issued in foreign currency, and the place of money payment and the bill's issuance location were different.

Advantages of bills, including the bill rigor, led to a tendency of drawing usual debt obligations in the bill agreement form. By means of the bill agreement, it was possible to avoid the Church's prohibitions of usurious profit, as *distantia loci*, or money payment in another place (that is a transfer function), which made these operations legal from the viewpoint of the canon church doctrine. Therefore, bill drawers specially resorted to *distantia loci*, for example by the indication of another locality's exchange rate, favorable for a bill-accepting person. Occasionally by the parties' preliminary agreement, a bill had an indication of that payment locality, where the rate was more favorable to a bill-accepting person, though money was not actually paid in the specified locality. Italian cambistes have numerous references to such tricks. They called these bills *cambia sicca*—"dry," that is a fictitious bill³³⁷.

It shall be noted that the canon law doctors discerned these subterfuges, and on February 5, 1570, the Pope Pius V anathematized such bills, naming them "dead"—they were forbidden as operations, based on a money interest-bearing loan. Only market determined exchange rates were considered correct, and campsore's attempts to establish their favorable exchange rates were condemned. However, the canon

law doctors, justifying some agreements and criticizing others, did not believe that any currency agreement includes both an exchange and a credit function, and thus failed to define a real border between different aspects of profits and expenses of bill agreement participants.

As far back as XIII century, the sou rate in Genoa and at Champagne fairs much differed. At fairs, a higher currency (fixed, not flexible) rate was a condition of the money market balance, which accounted for a periodic rise of the fair fixed currency rate and the non-fixed rate drop. However, a risk of the bill agreement participants should not be overestimated, as most of them were business experts, who were regularly informed by their agents about the market condition³³⁸.

When doctors revealed cambists' contrivances, additional profit bill operations began to be prosecuted in Italy. In XVI century (at least, in Italy), bills, in which the drawer and the payer was the same person, almost completely disappeared in trade circulation. It also promoted the development of bills of exchange, in which the specified bill payer differed from the bill issuing person (even if this difference was fictitious). Bills of exchange had certain restrictions (in particular, there were prohibitions of bills without the payment place indication, or bills with too long of a payment term), because they were considered as concealing a money loan. For this reason, a requirement was imposed on fair bills to be issued only for the nearest fair³³⁹.

The fair bill (*cambia nundinalia*, *cambia nundinarum*) was spread during an epoch of fairs. It was actually a bill of exchange unlike other bill forms, which were not used at fairs (*cambia simplicia*, *cambia platearum*, *cambia sine nundinis*, *de plateis in plateas*). It was a fair bill, which at that time was considered normal and typical (*cambia regularia*). Other bills, both accidental and non-typical (*cambia irregularia*), served a function for simple money remittance or usury concealment. And all the bills, in which fairs were mentioned as a bill issuance or payment place, related to fair bills.

The fair bill characteristic features were formed during its domination period. The bill agreement's written form prevailed for practical reasons; sometimes bills were issued in several copies in case one was lost. The bill's wording depended on the bill agreement participants, and a fair bill was not yet of a precise form. However, it already had all the main components of a bill obligation: a payment instruction, a bill sum, the names of the persons participating in the given bill obligation, the currency receipt mark and the signature of the person who issued the bill. The bill mark, an inscription to the effect that the given document is a bill, became an important bill element. The payment time and place indication was a precondition³⁴⁰.

Let's consider how profit was gained from bill operations during the fair epoch. A bill remained primarily a tool of the remittance of money, which could be received in another city, state or fair. If a bill was sent, for example, from Lyon to Medina del

Campo, it was issued in a conventional money unit, ecu de mark, and money was received against it in the Castilian coin, maravedi. If a bill was issued to Antwerp, money against it was received in Dutch livres.

As a rule, at fairs the ecu de mark rate was higher than in other places, and this difference increased with time until the beginning of the next fair. In Raimond de Roover's opinion, bankers created these different ecu de mark rates so that unknown persons (first example the canon law critics) could not accuse them of getting interest from credit operations³⁴¹. It was this rate difference which constituted the mechanism of profiting from the bill circulation at fairs, and the subsequent real ecu's (the gold coin) introduction did not affect further functioning of this mechanism.

Fairs also gave rise to the *ricorsa* practice, in which a certain addressee's bill could be returned to its owner after (upon a previous agreement) several transfers. This practice came into use in XVI century in Italy and Lyon, where it was called *rescontro* (*rescontro*), or redraft. There were cases when by means of *rescontro*, a bill circulated for up to six years, being a concealed form of an interest-bearing loan.

Operations of a fictitious exchange in the form of bills of exchange (*con ricorsa*) were of two kinds—*con ricorsa semplice* and *con ricorsa continuata*. These bills became especially important at Piacenza fairs. The first type of bill was made in any place of Europe for payment at the Piacenza fair and cancelled immediately after the payment date. It was replaced by a new bill, drawn to the money market, where the cancelled bill had been issued. The *con ricorsa continuata* bill was not made in the place of the initial bill issuance, and this operation continued until the last bill was drawn in the initial market. As the *con ricorsa* bill profit rate was known in advance, they were considered fictitious. The text of the Piacenza-made bill always confirmed the conformity of its rate to the official rate (*conto*) at the Piacenza fair. As *conto* was fixed on the basis of exchange rates, the bill buyers were always sure of profit³⁴².

In this case, the profit mechanism was used in the following form: where the own money unit with the fixed rate was quoted in foreign currency with the non-fixed rate (for example ecu de mark in Lyon was quoted in Genoa ecu), the exchange rate was always higher than in the places where the foreign money unit with the non-fixed rate was quoted in the local currency (for example ecu de mark in Genoa—in Genoa ecu). Such rate differences automatically led to the bill circulation profit. This mechanism was connected with the hierarchical structure of the European markets—first of the Lyon and later of the Bisenzone fair in Piacenza³⁴³. The bill circulation between Lyon and Genoa usually made the profit of 1.8% from each operation. Jacques Savary noted that profit could reach 2–4% and sometimes even 10–15%, depending on the coinage standard, the quantity of money and bills in markets³⁴⁴.

During the fair epoch, negotiators and bankers created the money substitute in the form of bills, which was easily transferred through political and currency borders, forming a uniform trade-commercial space throughout Europe. In XVI century, the sphere of bill financial operations was considerably expanded by Spain, Portugal, England and other countries. If at first Italian companies monopolized the

money exchange sphere, then in XVI century, they competed with German bankers (in particular, Fuggers), Spanish (Simon Ruiz), Flemish (Erazm Sheltz) and English (Thomas Gresham). Genoese continued to play a leading role at fairs at Castile and Besançon. They remained the first European bankers in XVI-XVIII centuries.

Raphael de Turri was the first to express an idea about a special fair type of the bill. In his opinion, the fair bill was the only correct form of the bill (*cambium regulare*), whereas bills, which were not circulated at fairs (*cambium irregulare*), were considered to have no weight.

Earlier authors (Laurentius, Ambrosius and Sylvester) do not at all mention the fair bill type, though during their lifetimes it was widely used. According to S. Scaccia, the fair bill played such an important role that other earlier widespread bill types gradually lost their significance.

In XIX century, W. Endemann came out with a scientific idea of the fair bill type. He called them fair (German *Messwechsel*) bills of exchange, issued or paid at fairs. The fair bill is considered to appear at a fair in Lyon and the Lyon's bill is a fair bill prototype³⁴⁵.

The fair bill was specific by the method of its use at fairs. A regular intercity money transfer much differed from money remittance at fairs. In the 1930s, this viewpoint was supported by Julio Mandich, who considered the fair bill a new financial tool. J. Mandich's arguments consisted of the following: 1) unlike usual intercity money remittance, settlements at fairs were made by the mutual payment count; 2) fairs used a conventional money unit, *ecu de mark*, which allowed to convert different currencies on the basis of the *ecu de mark* rate; 3) fairs created a new kind of money remittance—*cambio con la ricorsa*. J. Mandich believed that the bill of exchange was used at usual intercity money remittance for avoiding cash transportation. The bill became primarily a credit tool at fairs³⁴⁶.

At fairs at Lyon and Besançon, settlements by mutual counts and compensations were indeed widespread. Bankers could use the non-cash cover of debt obligations, which reached millions of *ecu*. The fair epoch evidenced the development of the bill functions and ways of its use, even though its essence did not change.

The significance of the fair epoch does not consist as much in using a conventional money unit, *ecu de mark*, and the special fair bill (which remained the usual bill of exchange), as in the appearance of new methods of bill operations. Fairs helped bankers expand their circles of business partners, who benefited from the introduction of the most effective mutual settlements between various European trading cities. Fairs also promoted bill circulation in many countries, which caused the unification and development of the bill's main characteristic features. The wide use of bill operations at fairs contributed to the development of the main bill circulation practice, the bill terminology (acceptance, *aval*, protest) and the exchange law norms³⁴⁷.

2.4

Endorsement Appearance

THE DISCOVERY OF America and new sea trade routes in XVI century caused a decline of fairs and the necessity of new bill procedures for the bill circulation expansion. There were required guarantees for a bill operation to be implemented as quickly and severely as at fairs, but on condition that a bill agreement itself was not limited by a fair place and time. Though by the end of XVI to the beginning of XVII centuries, the bill operation terminology and practice had been mainly developed, the bill was not yet perfect for circulation. The expansion of the circle of the bill circulation participants, from the limited number of bankers and merchants to ordinary citizens, was an important economic factor. And according to V. A. Belov, the bill was used for servicing the needs of a predetermined circle of people, which basically contradicted its order nature³⁴⁸. All of these factors led to the appearance of endorsements.

In L. Goldschmidt's opinion, after the draft became a bill document, it comprised an order warning and sometimes a caution to the bearer, thus becoming as flexible as a simple bill. During this period, the bill was not yet endorsed, though, undoubtedly, a non-formalized bill transfer, particularly for clearing, already occurred³⁴⁹.

In compliance with the traditional concept arising from Jacques Savary's works, the endorsement originated around 1620 in France. According to Henri Levy-Bruhl, it is explained by the fact that in Mareshal's work "*Traites des Changes et Echanges*," published in 1625, the endorsement is not yet mentioned, and Kleirak's in the book "*Usance du Negoce*," published in 1659, already describes the endorsement under the reverse inscription name. Raphael de Turri and Sigismondo Scaccia also do not mention the endorsement, but Dupius de la Serra, whose book was published in 1680,

wrote about the distribution of the transfer of bills of exchange; it was also noted by J. Savary³⁵⁰.

Though the concept "endorsement" and the operation itself appeared in France, there are older records about the bill transfer use. The transfer inscriptions on the bill's reverse side appeared in England long before the most ancient French document, dated 1389 and considered the first endorsement operation evidence. In 1289 and 1297, there were advance records on the royal check reverse side, which were called an advance payment against the royal debt letter (*indorsentur*).

L.Goldschmidt's facts deny the endorsement's French origin. An order warning and a caution to the bearer are present in the commercial charter of Bologna (1550) and in the beginning of XVII century (in the opinion of M. Neumann in 1605 and of Goldschmidt in 1620), bill transfer was forbidden in Germany, which shows that this practice existed there. In 1623, it was decreed at Spanish bill fairs that the endorsement's (Spanish *endosadores*) interest should not exceed 10%, which also testifies to the bill transfer use in Spain. In Italy, the first mention of the debt document transfer is connected with the name Mateus de Aflecto (he died presumably in 1510 or 1528), also evidence of such transfer in the beginning of XVI century and probably earlier. Moreover, there were cases of a bank check *girata* in Sicili (1560) and Naples (1574)³⁵¹.

As a whole, the endorsement appearance issue is controversial, and authors of different concepts express divergent points of view. We shall try to determine the main approaches to the endorsement origin problem.

1. *The endorsement arose from scontratia*. This endorsement origin concept was offered in the end of XVIII century by G. F. Martens. Its essence is that the endorsement resulted from operations of mutual debt payment (scontratia) at fairs at Lyon³⁵². A similar viewpoint was also shared by A. Frémery, who noted that the mutual payment operation developed at fairs at Lyon and comprised the bill acceptance for payment, the mutual debt negotiation and the rest cash payment³⁵³. D. Macleod also believed that the practice of mutual debt indemnification appeared in XVI century in Lyon, noting that the settlement of debt obligation by their mutual cover proved to be much more convenient than cash payment. Bills passed through many hands and were exchanged many times before payment at fairs at Lyon, approximating money in this regard³⁵⁴.

Mutual debt repayment by scontratia was made possible by centralized bill operations at fairs. Financial interests of all bill operation participants required the bill to become not only a payment means between creators of the bill agreement, but to be repeatedly used by people who knew nothing about the initial bill agreement. The required bill circulation expansion was considerably satisfied at fairs by scontratia, which was also called giro (*giro*)³⁵⁵.

In most cases, the bill's specified sum could be passed from one person to another by scontratia at fairs only at payment (in the presence of all bill agreement participants).

As P. P. Citovich noted, the bill transfer, allowed at the moment of payment in the presence of all *giranti*, became the first step to the permission of such transfer before payment. This was successive, but no longer contemporaneous³⁵⁶.

The endorsement's historical relation to the medieval fair *giro* is shown by the "*giro, girare, girata, girante*" terms themselves, which in the Italian language (and in the German business language of XIX century) meant the endorsement, to endorse, the endorser and the endorsee, respectively. The idea of the endorsement's origin from *giro* was stated by F. A. Biener³⁵⁷ and became wide-spread in XIX century.

As early as XVI century, the bill was transferred in Italy under the name "*girata*." According to L. Goldschmidt, the bill *giro* is first mentioned in the law, published in Venice on December, 14, 1593, which prohibited girotransfers. There is an authentic documented giro operation in one of the Neapolitan acts of 1600³⁵⁸. Neither S. Scaccia nor R. de Turri mention giro, which motivated the stance of F. A. Biener, who believed that the bill endorsement was not at all used in Italy during XVII century³⁵⁹.

A fair visiting negotiator usually had a special notebook, where he recorded issued bills. This book was presented to the fair management (*conservatores nundinarum*). Then payers were looked for, an acceptance was appointed on a certain day and after it a *scontratia* for covering the liabilities by the assets and the bilateral clearing of creditors and debtors' debt obligations was issued. As S. M. Barats notes, this place needed a rush, a "whirl" (*girare*) around the fair, in order to unite in one circle (*giro*) bill debtors and creditors for transferring one's requirements and claims to each other. The bill endorsement prototype appeared. Though it was not anticipatory (as a bill was paid on the spot), it consisted in the fact of the transfer of a bill and all its requirements³⁶⁰. An already existing bill endorsement (*girata*) replaced the issuance of a new bill, and an endorser became just as responsible for the bill as a new bill drawer. The endorsement became an essentially new legal institution, which developed from a giro at fairs in XVI century³⁶¹. As for the *scontratia*-giro relation and the use of the concept "*giro*" instead of "*scontro*," according to A. F. Fedorov, the reason was that the concept "*giro*" had a wider meaning and related to money transfer as a whole, including a *scontratia*³⁶².

Unlike *scontratia*, the endorsement implies a transfer of a debt obligation and not its mutual count repayment. The mutual count assumed the final bill settlement, whereas the endorsement was used to simplify the circulation of bills, which were not due yet.

2. *The endorsement origin shall be found in the aval procedure.* Money was remitted by the bill order *avallo* (sometimes called *giro*). In C. Grunhut's opinion, this procedure, sometimes called giroaval (*giroaval*), can be considered as the endorsement parent. The concepts "*indosso*" and "*avallo*" were used in the same meaning for some time³⁶³. F. von Canstein pointed out that the endorsement was already used at fairs when the clearing operation participants who used a bill for payment, signed as *a valle*. However, it shall be noted that the XVII-century *aval* and the modern one are

different concepts. In XVII century, the “aval” concept related to bills of exchange (drafts), which were made under the following scheme:

At the fair, person № 1 wants to transfer to person № 2 his requirement to person № 5. Person № 2 agrees to such transfer and further transfers this requirement to person № 3, and person № 3, in his turn,—to person № 4. For such transfer, person № 3 issues to person № 4 a bill, valued on person № 5. Person № 3 is a drawer, but persons № 1, and № 2 will also sign this bill. As they transferred the requirement to each other, they are responsible for it as avalists³⁶⁴.

Thus there were a consecutive number of avalists, persons who bought one and the same bill obligation for gaining profit. In case of non-payment and the return of such bill with the protest, any of the consecutive avalists made a claim to the bill issuer and his direct predecessor. However, at that time an automatic and joint liability (the endorsement main legal consequence) was not yet formed as legal institution.

In practice, these bill operations were carried out by brokers, who at once approved the price and other conditions. It was possible to more than once transfer the same sum during the period between the agreement's conclusion and the bill of exchange's issuance. As R. de Roover noted, though different legal treatises mention aval in the form of some consecutive transfers, a lot of bills of exchange in the archives of Florence and Antwerp do not have such examples. It shows that at that time, such aval practice was not so widespread. Instead of some consecutive bill, the draft was signed by the bill issuers or sellers' assignment³⁶⁵.

Though it is quite possible to consider the XVI-XVII century aval as a number of consecutive debt obligation transfers, this transfer—unlike the endorsement—was before the bill of exchange issuance and not after. The aval was considered the endorsement's parent, because postscripts were made in the bill bottom (*a valle*), that is in the same place, where a transfer inscription (*girata*) corresponding to the endorsement was put in Italy. It shall be taken into account that even in XVIII century, the concepts “*avallo*” and “*indosso*” did not often vary.

The very fact of the identity of a place where there was a bill postscript is not yet a basis for the conclusions about the endorsement's origin. In fact, Italian guarantee and transfer inscriptions were made in the bill face bottom, but these two types of inscriptions differed in their respective forms. If a guarantee inscription expressed the surety acceptance and one signature under the bill issuer's signature was enough, a transfer inscription (*girata*) had a form of a payment assignment, given to the drawer³⁶⁶.

3. The endorsement was brought about by traders' customs to pay their debts by means of records in the campsores' (banker's) registration books or merchants' accounting books. But according to the rules, which existed both in Italy and Brugge, such a payment method was the final settlement, after which a regress claim became impossible.

As A. F. Fedorov reasonably pointed out, an assumption that the endorsement resulted from the transfer (*giro*) of money from one person's account to another person's account is not persuasive, because its participants had to have current accounts with the same banker or in the same cash department for such remittance. Otherwise such bill transfer was not possible. The very fact of rewriting money from one person's account to another person's account could not lead to a guarantee for the person who transfers the bill by the endorsement, as the sum rewriting is full repayment without further recourse.

The right of recourse is the endorsement's main legal consequence, and as bank remittance did not grant a creditor any right of recourse, it is not clear how one kind of payment could cause an absolutely different one. However, there was also the extra-bank remittance (*ditta fuori di banco*) apart from the bank remittance (*la ditta di banco*). In compliance with the Italian municipal and corporate charters, a debtor had no right to evade a creditor's demands to transfer a credit to the third party. This widespread tradition accounts for numerous transfers in accounting books of medieval merchants, who thus saved cash. The extra-bank remittance (in contrast to the bank one) did not release a debtor from his responsibility to a creditor: he remained a guarantee of an ability to pay of the transfer third parties. It can be considered as a way of granting a creditor a right of recourse in case of the debt non-payment.

Despite such system advantages, it also caused abuses, as it enabled debtors not to pay in cash, sending a creditor from one debtor to another until he found a person with cash. In order to avoid such inconveniences, negotiators made a transfer record in the debt obligation's heading, though a debt obligation transfer was not acknowledged by the court at that time.

4. *The endorsement arose from the representation institution.* At the first stage of the bill's development, two bill obligation participants were joined by two representatives. One of them was a bill presenter, who was determined in advance by the bill agreement participants. However, the requirement to specify a presenter's name and his dependence impeded an increasing need for a bill obligation transfer. Then a presenter was acknowledged to have the right of an independent claim (of which he could not be deprived at the will of a person, who transferred the bill to him) and the right of further bill transfer. According to F. Shershenevich, it was this gradual presenter's independence which mainly caused the appearance of the endorsement³⁶⁷.

An authorized representative was appointed for obtaining payment through a bearer as per an order clause (German *orderklause*), because there was a corresponding inscription in the bottom of the bill or on its back. Debt documents with an order caution had already been circulated for a long time, and an opportunity to demand payment through a representative was an important precondition for the distribution of the endorsement³⁶⁸.

A. F. Fedorov also believed that the endorsement arose from the bill record about the presenter's transfer of the bill rights (with reference to the order), when the presenter himself could not receive the bill money. An order was added to the presenter's name, because it was not often possible to envisage who exactly would have to receive the bill payment, and the bill itself provided for money receipt by any payee's order without additional proof. It was thus possible to transfer a bill only once, and by removing this restriction, it was acknowledged that the bill with a transfer inscription could be freely transferred³⁶⁹.

The viewpoint was shared by A. Doliński, who believed that the debt receipt through an authorized person (a representative) had already been used in ancient chirographs as a special document inscription, entrusting the debt payment to a remitter's specified person. Thus a remitter transferred the payment demand authority. Initially, such authority required concluding a special document, which was then put near an assignment inscription on the bill face (at aval) or on its reverse side (*in dorso*, an endorsement prototype)³⁷⁰.

The new aspects of the endorsement's origin appeared in the middle of XX century, when F. Melis found in the state archive of Florence a document, dated 1519, which can be considered an endorsed bill:

« On August 6, 1519, a bill of exchange was drawn from Naples to Florence for the sum of 50 gold ducats. Four participants are specified in the bill: 1) the drawer Gianfrancesco Strozzi, living in Naples; 2) the creditors Bartolomeo Ginori and Aniuolo Strozzi, also living in Naples; 3) the beneficiary Niccolo Boncini from Florence; 4) the payer Federigo Strozzi, also from Florence. The bill of exchange is accepted, and is a subject to payment in time. There is an inscription on the bill's reverse side: "To pay fifty ducats for me, Niccolo, to the cloth manufacturers Antonio Salvetti and the Company". Thus this bill of exchange was endorsed, and the beneficiary Niccolo Boncini gave instructions by giro to pay the bill to the cloth manufacturing company—Antonio Salvetti and Co.

The payer Federigo Strozzi's settlement book has a record, according to which the bill of exchange was drawn in Naples on August 6, 1519; it was paid on September 3.

The payer Federigo Strozzi made a record into the debit of the drawer Gianfrancesco Strozzi from Naples and into the credit of his banker Carlo Ginori, who made the payment. This record was formulated in the following manner: "Gianfrancesco Strozzi drew the bill to us in time in favor of Niccolo Boncini and through him for Antonio Salvetti." This proves that Niccolo Boncini concedes his rights to Antonio Salvetti and the company and that the latter received the sum under the bill of exchange on behalf of the initial beneficiary³⁷¹.

This bill was the only in the pack of 16 bills, dated from 1510 to 1519. Not one similar bill was among 50 bills for the period of 1518–1519 in another collection from the same archive. The analysis of the records of Federigo Strozzi, one of the most significant Florentine bankers of that time, also proves the availability of only three

records with the text similar to the above given bill sample. This shows that though in 1519 the endorsement was already known in Florence, it was extremely seldom used in practice.

The new revised version of the Bologna charter of 1550 mentions bills of exchange, which are subject to payment to a particular person or to a bill bearer. It is stated that the bearer should not confirm his authority. Though we do not know how much such operations were widespread in Bologna in 1550, this reference can be considered proof of more frequent use of the endorsement. By the end of XVI to the beginning of XVII centuries, it was already widely used in Florence, Pisa and Livorno, three of the main bank centers in Tuscany.

The new documents, found by A. Lapejr in the archive of the Spanish province Valladolid and by F. Melis in the state archive of Florence, testify that the endorsement practice really appeared in the beginning of XVI century, but its distribution was complex and long (as is known, even in XVIII century, not all countries acknowledged bill of exchange endorsing)³⁷².

A bill obligation transfer idea came into being long ago (transfer inscriptions on securities were known in Italy since XIII century³⁷³), and the first endorsement forms appeared in Florence in the beginning of XVI century. However, the endorsement practice was very slowly introduced, and though by the end of XVI century it was already well-known, it was not common because it was opposed and often prohibited in Naples and Venice. The endorsement development in Spain was very similar. Gradually the endorsement drew attention of legislators and lawyers. Most of them tried to forbid it, as, for example, the Neapolitan charter "*Pragmatic*" of January 8, 1607, allowed only one *girata*, but not repeated endorsements. These numerous and continued endorsement interdictions and restrictions made its origin history complicated and intricate.

By the Roman law norms, debt obligations were not subject to transfer. Being influenced precisely by these norms, Italian lawyers (in particular Benvenuto Stracca in the middle of XVI century) limited a debt right transfer, believing that a bearer could be allowed to court proceedings on behalf of the creditor only if he proved that the debt obligation had been handed over to him for payment, and presented the power of attorney. Only in the next century did bearers get broader rights.

The medieval mentality also affected a personal character of commercial relations. It did not promote the transfer inscription introduction and the bill circulation growth, because it was not allowed to transfer the bill rights to third, practically unknown parties. Thus, though the "pay to such person or a bearer" formulation is often mentioned in debt notes of XIV-XV centuries, according to R. de Roover, it is quite rare because bills of exchange during that time had more in common with letters of credit, issued to travelers, churchmen, pilgrims or students. They were similar to bills of exchange, but differed from them because they were issued by a banker in favor of non-commercial people. Debt notes were also subject to payment in exchange of a receipt.

Notarized currency agreements of XII-XIII centuries often had a provision, according to which a person who borrowed money on credit was obliged to return it either personally to a creditor or to his legal representative. In time, this practice became outdated. Such agreement form disappearance among bills of exchange of XIV-XV centuries can be considered as the Roman law influence. This agreement form was good for the caravan trade conditions, but lost its expediency after the decline of Champagne fairs and the development of a new type of trade, based on correspondent relations and companies, having its branches and representations in different markets.

It was long required by the trade activity that partners or commercial society's representatives should assume obligations (including debt ones). The first records of the debt obligation transfer date back to the beginning of XIV century. The materials of the proceedings at the Champagne fair in 1304 stated that a commercial society or a company's (Italian *societas*) representative had the right to undertake the debt obligations on behalf of the society. Item 13 of the Bologna charter dated 1454 and item 17 of the Bologna charter dated 1569 also prove this right: "The bills, which will arrive at Bologna for their repayment, should be accepted by the one who will be authorized for making settlements of the person to whom payment is entrusted, regardless, whether the owner or the manager will have such power".

However, obligation undertaking by partners or commercial representatives is not yet an endorsement. The main condition of the acknowledgement of the bill rights transfer by a real endorsement was a joint responsibility of all the persons who put their signatures on the bill. In XVI century, this idea was not yet developed, therefore it is hardly possible to completely agree with this endorsement origin concept, as well as with the viewpoint of G. F. von Martens, A. Frémery and P. P. Citovich, who believed that the endorsement was brought about by *scontratia* operations at fairs at Lyon.

A transfer inscription was made on the bill face in Italy. The bill transfer was made with a full and definite indication of the person, to whom it was transferred with reference to the order. A presenter was authorized to transfer a bill only with the mark "*by such person's order*". However, with this person's indication, the order force became exhausted, which limited the bill circulation.

During the previous periods of the history of bill circulation in bill operations, the representatives of the creditor and debtor also took part. First, a presenter was not an independent bill operation participant, and could operate only as the authorized representative of the person who received the bill. However, a bill receiving person, who demanded to include a presenter's name in the bill of exchange's text, did not always know in advance who would be a presenter. Therefore, the instruction to pay directly to the creditor became added with the words "... *or by his order*," meaning the person who was specified by the bill addressee and carried out this order, put an inscription indicating who should settle the bill instead of himself on the reverse side of the bill (*in dosso*—on the reverse side).

Not wishing to be limited by the indication of certain persons, the bill addressee often left a blank space before his signature, where it was possible to record any person authorized to get the bill money. The blank endorsement became a reaction to a repeated transfer prohibition: the transfer inscription text was not written, and only the endorser's signature was written. A place, required for entering the endorsee's name (a person who received the bill by the endorsement), was also not filled in, and the name was written at the moment of the bill settlement. These *billetes en blanc* can be considered an intermediate stage between *scontratia* and the real endorsement.

By the time of the acceptance of the ordinance of 1673, the endorsement was simply a signature on the reverse side for security. The ordinance introduced two essential amendments of this procedure, specifying in item 23 of section V that the endorsement will not be valid (and will not transfer the property right), if the endorser's signature is not followed by the date, the assignee's name and also the sum, which he granted. It is obvious that transfer inscriptions were practiced before the acceptance of the 1673 ordinance. This practice probably developed after the Edict of 1601, and its purpose was to provide a more favorable interest. The blank endorsement appeared—merchants put their signatures on the reverse side of the bill. Naturally, it caused abuses: if such form was lost, a person who found it could easily lay his hands on it.

Billetes en blanc were widespread in France, which is proved by the fact that even in 1604, merchants complained to the Paris parliament deputies about the disorder in commercial transactions, caused by the bearer documents. The Paris parliament often prohibited their use³⁷⁵. J. Savary pointed out that in the beginning of XVII century, some merchants started to use bills, issued in forms with a blank space for a name of a person to whom the bill was given. As a result, such bills were sold and passed through the hands of 6-12 people, who knew nothing about the origin of this bill. There was a case when a 100,000-ecu bill crossed all of Europe, having collected more than 50 endorsements, for the writing of which long paper strips were pasted to it. Such practice caused frequent abuses, and for this reason, the court decision of June 7, 1611, forbade bankers and merchants to use bills in forms³⁷⁶, however they were still used in XVIII century.

Billetes en blanc failed to completely meet merchants' needs, and the rapid trade development made them face more complicated problems of enlarging their trade agents' powers. Earlier merchants' representatives and agents could collect the bill money only personally, but sometimes circumstances required an immediate payment while a trade agent was in another place. The agent could have paid the bills of the negotiator for whom he worked, but in this case, he would have to transfer the bill collection rights. The agent had no such authorities. An issue of a representative's rights drew attention in the middle of XVI century, when Benvenuto Stracca noted that debt documents (he called them chirographs) were widely used by merchants³⁷⁷. All these methods pursued one purpose—to simplify and facilitate bill operations, thus creating more possibilities for the bill circulation.

Summing up different view points of the endorsement's origin, we shall note that in our opinion, all the above mentioned factors greatly influenced the endorsement development, and it is possible to observe a consequential evolution of the idea of the bill transfer from *scontratia* at fairs through the *aval* and the representation institution to *billets en blanc*—the endorsement's nearest predecessors. A design itself of the bearer document, which were *billets en blanc*, promoted the formation and the development of the endorsement idea.

However, the endorsement contradicted both the developed bill circulation traditions and bankers' interests. Earlier credit could be repaid not only by cash (when money was paid on term, for example at the next fair), but also by indemnification or the mutual payment count, *scontratia*. Eventually, bills were used for this purpose, though their use was complicated because the remitter had to personally address a drawee for receiving the bill's specified sum before a transfer inscription appeared.

Thus a person, who lived in Bologna and received a bill on a banker living in Venice, had to go to Venice for receiving the bill money there. As a result, bill operations were carried out mostly at fairs, attended by a drawee (a bill payer) and a remitter. As a drawee and a remitter could not be always present at one and the same fair (no non-fair payments were also required), it was necessary to apply intermediaries, bankers, who had business ties in different cities and could effect bill payments (at that time, a banker was mainly considered a person who carried out bill operations).

The situation changed after the endorsement distribution in France: bankers could no longer supervise bill operations and dealers, who used these operations. A simple bill transfer procedure, which could be freely passed from one person to another, increased the Italian bankers' bill operation monopoly, therefore (though the need for the transfer inscription distribution was objective and relevant) there were many opponents to the introduction of the endorsement.

The bill right transfer by the endorsement often caused abuses and bankruptcies, as it was not always possible to determine the bill's origin and its issuance circumstances at the debtor's insolvency. Such cases were widespread mostly in France, causing numerous prohibitions of bearer documents.

The Italian legislation also impeded the endorsement's distribution. In 1593, it was prohibited in Venice. In Naples, the Code of 1607 permitted the endorsement of a bill only once, and transfers could only occur with the notarized endorser's signature. Though these restrictions and prohibitions were mostly in Italy, in the beginning of XVII century, they were also observed in other countries.

However, it should be noted that attempts were made for their cancellation. For example, on May 24, 1651, the municipal ordinance of Amsterdam lifted all bill transfer restrictions. Though this order was in effect for a short time, the Holland legislation can be considered as more progressive compared to other countries. In France, the endorsement was acknowledged by the royal decree of 1654 and the ordinance of 1673.

Thus by means of the endorsement, a bill of exchange (a draft) got out of the exclusive control of the Italian bankers and became an instrument of all businessmen. Though the bill, used by the Italian bankers, promoted the circulation of currencies, this circulation was limited by a narrow circle of people. The endorsement removed this restriction, and the currency could be transferred as many times as the bill passed from one person to another³⁷⁸. On the whole, the endorsement greatly influenced the bill's economic essence, because the increasing circulation expanded its functions, from a means of money transfer to a means of payment. Passing from one person to another and repaying mutual obligations, the bill itself became a subject of trade as security. It was the endorsement, which made the bill the means of credit.

2.5

Development of Bill Operations in France. The Proliferation of Endorsement.

IN THE BEGINNING of XVII century, a transfer inscription (the endorsement) became widely practiced in France. This conventional period (from the beginning of XVII century to the beginning of XIX century) was named the endorsement period by P. P. Citovich. Sometimes this period is considered French, because the bill circulation was no longer developed solely in Italy, but also in France, Holland, England and Germany³⁷⁹.

Among historical and socio-economic factors which led to the endorsement's distribution in France, the decreased trade importance of Italy, the increased economic potential of France and the development of the French law enabled France to escape the restrictions of Roman law, which did not allow a debt obligation transfer.

The discovery of America and new trade routes not only caused the decline of fairs, but also reduced Italy's economic role. In this connection, G. F. Shershenevich pointed out that "Italy was left aside and France became in the center"³⁸⁰. A simultaneous growth of the trade activity of Dutchmen and Englishmen who created large trade companies and seized new colonies commenced. It resulted not only in Italy's loss of its former significance as the trade banking center of Europe, but also in the Hansa decline. The demand for credit operations also became one of the economic prerequisites for the bill circulation expansion, including making the bill obligation-free of such restrictions as particular bill agreement participants, which promoted the transfer inscription distribution.

The development of the French law became another historic precondition of the endorsement distribution in France: changes in economic life and the state system required new, commercial law without restrictions of the canon and Roman law of medieval Europe. The endorsement use expansion was promoted by the distribution of the practice of credit operations accounting and the intermediary development. The latter was caused by companies' growth and gradually led to considering an enterprise separately from its proprietors. The endorsement itself developed on the basis of the bill transfer idea (which already appeared in the fair period).

It should be noted that absolutism and trade developed synchronously in France, where the first attempts of the legislative regulation of trade relations and the creation of the commercial law codification were made. In France, legislative acts were initiated not by the merchant class, but by the royal power. According to G. F. Shershenevich, state power generally strengthened in Europe at that time, which led to an increase of internal security, in particular the safety of commodity road transportation. The isolation of European cities was over, and active trade-commercial relations were established between different cities.

The government was guided by the Roman law, which symbolized the order idea, and the church—by the canon law, which was closely connected with the Roman law. That is why three legal systems—the Roman, canon and commercial law existed in parallel for some time³⁸¹. It was the latter, which reflected a real commercial practice.

A custom was the main source of legal rules in the history of the French medieval law. Though in the south of France, the Roman law traditions were well-established, the French monarchy's attitude to it was complicated. On the one hand, the reliance on the Roman law norms promoted the royal power's strength, and on the other hand it could be perceived as the recognition of the Holy Roman emperor's authority. Such ambiguous attitudes resulted in the King Phillip-August's prohibition of the teaching of Roman law at University of Paris, which was resumed only in 1679 under Louis XI. As a whole, the French kings wanted to limit the Roman law influence, and Louis the Saint (XIII century) decided that the Roman law norms were not compulsory in the French kingdom's territory. The influence of the church-canon law began to decrease in France, which was caused by the monarchy's struggle to strengthen its positions.

Though in French debt documents of XII-XIII centuries, the Roman loan formula (*mutuum*) was still used, it later lost its significance, as the canon law prohibited interest collection. It should be considered that the church was the major lender in France, therefore it found a way to avoid the canon restrictions (a debtor paid a creditor a previously agreed upon fee, formally not considered as interest, but which totaled up to 25% of the loan)³⁸². Both the Roman and canon laws hindered the commercial activity development. The Roman law representatives, the legists, opposed the innovations in the commercial activity sphere. The commercial law's specific features gradually developed in the struggle against the canon and the Roman law.

A complex of favorable social and economic preconditions of the first half of XVII century in France stipulated the endorsement practice to be legally adopted in this country. In conformity with the French law, it was permissible to use documents not only by the order (*a ordre*), but also to a bearer. A long practice of the so-called *signatures en blanc* created favorable conditions for using the blank endorsement³⁸³. As V. A. Udintsev pointed out, when Italy's trade hegemony passed to France, the latter also took a firm hold of the further commercial law development³⁸⁴.

The French term "*endorsement*," arising from the French form of the bill inscription (*en dos*—on the reverse side) text, gradually became common. The endorsement practice was legalized by the decree of 1654, and then in the *Ordonnance de commerce*, adopted in May, 1673. The ordinance consisted of 122 clauses divided into five sections, and the main purpose of this document adoption was to keep merchants' trust to the endorsement practice and prevent a possible deceit. The fifth section regulated in detail the endorsement practice.

The professional businessman Jacques Savary (1620-1690) played an important role in the ordinance preparation. He was engaged in wholesale trade until 1658 and became quite experienced in it. Savary worked in the financial department and was a member of the ordinance preparation commission. J. Savary's role in creating and editing this document was so significant that the latter was called Savary's code³⁸⁵.

The ordinance of 1673 can be considered by its volume as the real code, because it represented the first code of commercial law. Later, its ideas made the basis of the French *Code de Commerce* of 1807. The bill circulation issues were developed in detail in the ordinance: this normative document regulated not only trade rules, but also the exchange law norms that promoted its wide distribution outside France.

The adoption of the ordinance and the Maritime Law Code, published in 1681, made the French commercial law a leader among other countries of Europe. From 1673, French terms and concepts prevailed in legislative and scientific works on commercial law³⁸⁶. The fifth ordinance section was dedicated to bills (items 1-33), and the sixth section prohibited the interest inclusion in the bill sum and the interest-on-interest collection. In conformity with the French exchange law main norms set forth in this normative document, the bill should correspond to the following provisions: 1) the drawer shall specify the currency equivalent to be received by him. That is, the bill should cover a particular trade agreement; 2) the bill shall have precise indications of the transfer right authorities. Two endorsement forms were supposed: 1) regular endorsement, when a bill was transferred into possession and 2) endorsement by agent, when a bill was transferred for its money collection on the endorser's account.

The next stage in the endorsement practice development was the appearance of several transfer inscriptions, and a joint liability of all persons, who put their signatures on the bill. As all of these people were equally responsible to the holder, the bill credibility and reliability became considerably higher. Some Italian bill customs survived in the French exchange law. In particular, it related to the bill issue grounds

and the indication of the bill money receipt. *Distantia loci* was a prerequisite of the draft issue.

The endorsement distribution considerably altered and increased the bill's role. When the bill became fully transferred, it was beyond bankers' control and became widely used as trade credit means. Not only the Italian bankers, but also merchants of other countries began to use bills. A payee got the right to transfer a bill to any third party, and the fourth person in the scheme of the bill circulation during the fair period, the presenter, lost his significance.

The 1673 ordinance was important because it established equal bill circulation rules for all trade cities of France (Lyon, Besançon, etc.), thus being guided by the trade practice rules and customs. In particular, the bill obligation execution term was 15 days for persons in France, two months—in Holland and England, three months—in Italy, Germany and Switzerland, four months—in Spain and six months—in Portugal, Sweden and Denmark (section 5, item XVI). Upon the termination of these terms, any requirements and claims to the drawers and the persons who put their inscriptions on the bill were not accepted (item XV). As for the bill reverse side inscriptions, if they were without a date and a name of the money paid person, they served only as payment receipt (item XXIII).

One more important feature of the 1673-ordinance was that the right of the bill obligation transfer by endorsement and the bill transfer legal consequences were not considered; the ordinance provisions worked out in detail a practical endorsement procedure and the responsibilities of the drawer (and persons, who put signatures on the bill) in case of the nonacceptance or nonpayment of the bill. It shows that when the ordinance was adopted, the endorsement was already widespread and common; its expediency was undoubtful. In the ordinance, the responsibility of the persons who put signatures on the bill was deemed equal with the drawer's responsibility. Thus each transfer by endorsement was considered as an issue of a new bill, the contents of which repeated the contents of the previous one, and each new person who put his signature on the bill was considered as a valid bill drawer. The ordinance's fifth section clauses did not limit the number of possible bill transfers³⁸⁷.

The endorsement distribution contributed to the bill agreement involvement of new, extraneous persons, not earlier included in legal relations, which caused this bill obligation. It required the development of the bill obligation's more precise formal aspects, which could become the basis for both the definition of the bill holder's rights and the bill creditor's claims. Therefore, the normative documents, which regulated the bill circulation rules, were constantly clarified at the end of XVII-XVIII centuries. The bill obligation's written form was acknowledged as compulsory, and the oral form, earlier allowed by some bill charters, became an exception to the rules.

If before the endorsement distribution, the conclusion of bill agreements and bill obligations was adjusted by private law norms, and the bill passive legal capacity coincided with the general legal capacity, then with the bill circulation development and the endorsement distribution, a circle of the bill agreement participants considerably

increased, which required the legal capacity restriction. This restriction was mainly intended for preventing a thoughtless bill agreement conclusion by a certain category of persons. In practice, it related to men of less than 25 years old, women, clergy and school teachers (and in some cities—to peasants, students and day laborers), who were not allowed to enter bill legal relations.

Relations between the bill drawer and the bill transferee changed. It was earlier considered that the bill's legal relations arose directly from the agreement, the subject of which was the bill issue. The endorsement distribution reduced the bill legal relations only to those which were based on the text of the bill itself and did not relate to the rights and responsibilities under the agreement, on the basis of which the bill was issued. Thus the bill transfer right was considered inherent in the nature of the bill, even without mentioning the order payment in the bill text.

During the endorsement distribution, the bill creditor often did not know the bill drawer, which caused uncertainty at the bill acceptance for payment by the drawee. Therefore, the payee was obliged to present the bill for acceptance immediately after its receipt. This requirement became so essential that if not fulfilled, the payee lost the right of recourse to the bill drawer in case of the drawee's nonpayment of the bill. For this purpose, bills began to be issued in two copies: one of them was sent to the drawee and the second was circulated with a note about the one with whom the bill with acceptance was stored. The drawee's bill acceptance note was also made in the bill text. After the bill acceptance became an independent document, the drawer's mutual settlements both with the payee and the acceptor lost significance for the bill obligation. Gradually, a currency note in the bill text became unrequired, which was also acknowledged by the bill charters (for example the Leipzig bill charter of 1682—items 3, 13). A compulsory written acceptance was established by the decree of the Leipzig senate in 1652, and the oral acceptance was allowed only by some bill charters—the Hamburg charter of 1711 (items 6, 7) and the Bremen charter of 1712 (item 21)³⁸⁸.

Thus the bill became an independent cosmopolitan payment means, almost equaling in this respect paper bank notes. During the fair epoch, bills were issued (and accepted) only to certain cities, however with the appearance of the endorsement, the bill was released from this restriction and became a drawer's formal obligation to pay to the bill bearer in due time. The bill became more similar to paper money and registered securities. Despite that, the bill was still dependent on the material circumstances of its issue and related to the agreement under which it was drawn.

However, the debt obligation, caused by the bill issue or transfer, got a unified, universal form and transfer ability, and the bill itself became an execution of the agreement on the transfer of one person's demand to another person. The endorsement's appearance also led to the bill bankers' discount. Banks charged a certain interest for an early bill payment amount.

In his book "The Perfect Negotiator," J. Savary demonstrates numerous abuses of bill transfers, which private bankers made for their own enrichment. He distinguishes

real bills and various *billets de change*, but only two of them were really *billets de change*. The rest were simple receipts (*simples promesses*), though by means of the inscriptions “pay to a bearer” or “by the order,” these receipts (similar to the endorsed bills) could be transferred to other persons.

These receipts were of the following essence. If a negotiator had to receive money in another place for paying the goods purchased there, he addressed bankers and merchants with a request to sell a bill to the city, for which he wanted to receive money. Having received the bill money, the negotiator gave a document (a receipt) to the drawer, in which he promised to pay a specified amount of money in due time. This receipt (*billet de change*) testified that the bill currency was not paid, but credited to the person who purchased the bill. According to J. Savary, the utilization of such receipts was an abuse because of the collection of any interest, which was considered as a money transfer payment. *Billets de change* covered usual usury, which was made in the form of the bill agreement for using the exchange law advantages (the bill severity, the debtor's detention and the consular court hearing)³⁸⁹.

For preventing similar abuses, clause XXVIII of the fifth section of the 1673-ordinance specified the following to be stated in bills: to whom they were issued, who paid for them and whether payment was made by money, goods or other things. Without these data, the document was not acknowledged as a bill and was considered a simple receipt.

The other kind of documents, mentioned by J. Savary, is also named *billets de change*. Though these documents mentioned payment to a certain person and were transferred with the creditor's name indication on the reverse side, they did not envisage the remittance of money from one place to another and were paid at the issue place. In J. Savary's opinion, this is precisely why these documents are not to be considered real bills³⁹⁰.

J. Savary calls *billets en blank* as another way of the endorsement abuse. They did not have a name of the person who should receive payment under these documents, and had a blank space where the document owner could later put in any name. These *billets en blank* stated that the currency was received, but it was not specified who paid for it and by what means. They were passed from one person to another one and used for usury, because their main feature was the recourse impossibility: any billet en blank holder could say that he had bought it from an unknown person. Most abuses occurred with these documents, therefore they were prohibited by the time of J. Savary.

Abuses with bearer documents became so spread in France, that in 1716, Louis XV issued an edict, in which he directly stated that bearer documents led to serious abuses. After numerous *billets en blank* prohibitions (by the ruling of the Paris parliament dated September, 7, 1660, the royal declaration of January, 9, 1664 and, finally, the ordinance of 1673), a new form of bearer documents—*billets au porteur*, which also caused many bankruptcies, appeared. Therefore, the 1716-edict enacted all bearer documents illegal³⁹¹.

Discrepancies with the real bill circulation features gradually appeared in the bill legislation, including in the provisions of the 1673-ordinance. Partial amendments of some provisions of the 1673-ordinance did not alter the situation, and later a decision on issuing a new normative document, the French Commercial Code, was adopted. In 1787, a commission on the commercial legislation revision was created, but its work was suspended by the revolution in France. A new working group was arranged on April 3, 1801 at the French Ministry of internal affairs (in the competence of which were the trade issues). The Commercial Code (*Code de commerce*), adopted on January 1, 1808, was elaborated using the provisions of the 1673-ordinance. The code consisted of eight parts, from which the eighth part was dedicated to bills. The main norms of this code were kept in France until the end of XIX century³⁹²

According to this code, any payment assignment was considered a bill if it provided for money remittance from one place to another one and mentioned currency and the order. The main bill obligation components were predetermined: should there be mistakes in writing a name, the residence data and the bill issue place, the obligation ceased to be a bill and turned into a simple debt instrument (item 112)³⁹³. The bill indication was no longer considered a compulsory component of the bill, but it always mentioned (in this or that kind) the currency receipt. The same mention was also obligatory in a transfer inscription (item 137)³⁹⁴.

The drawer of a promissory note (*billet a ordre*) and the acceptor of the bill of exchange (*lettre de change*) were acknowledged as the bill main debtors. The endorser's responsibility related only to those persons, to whom he directly conveyed his bill rights, though it was later permissible to use recourse to any of the endorsers without a predecessor.

The acceptance had to be made in written form within a day after the presentation of the bill. If within this time the bill had not been returned to the bearer, it was considered as accepted and the drawee had to cover all possible losses (items 122, 125). At the acceptance, only the bill amount restrictions were important and in this case, the bill was subject to the nonacceptance protest (item 124)³⁹⁵.

Code de Commerce worked out in detail the concepts "the bill nonacceptance protest" and "the nonpayment protest". The protest's essence consisted in the right of demanding only the payment provision and not the payment itself from the bill-obliged persons. The security for payment was the joint responsibility of all the people who put their signatures on the bill (items 118, 140, 164). Men had active bill rights, while women and minors were granted passive bill rights on condition that they were engaged in trade activity (items 113, 114). The code stipulated to distinguish a place of the bill of exchange issue and its payment place. Promissory notes were allowed if they reflected results of real trade agreements. Bills of exchange, which did not correspond to the provision of money remittance from one place to another, were called not *lettre de change*, but *mandats* (items 115-117)³⁹⁶.

Payment was swift due to the payment delay prohibition, even in relation to bearer bills (items 130, 135, 157). The bill obliged-persons' responsibility was limited by a

certain term (depending on the distance between a place of residence of endorsers or drawers and a payment place) with the obligatory notification of the persons entering into the bill relations (items 164–167)³⁹⁷.

Code de Commerce became widely used because it had simple formulations and all aspects of bill operations. After the conquests of Napoleon I and the French legislation's introduction in the occupied territories, the full volume code was adopted in Holland (1811), Monaco (1818), Belgium (1830), Portugal (1833), Greece (1835), Spain (1829–1885), Sardinia, Naples, many cantons of Switzerland, in the city of Danzig, and in the Warsaw duchy³⁹⁸.

The novelty of the provisions of the French commercial code made several other states develop similar laws. However, some drawbacks of the French exchange law system eventually became evident. In particular, though the *Code de Commerce* provisions show that the bill became gradually perceived as an obligation, the efficacy of which depended mainly on the contents and the form of the bill's written text, an attitude toward the bill as an agreement remained³⁹⁹. The French commercial code does not mention impact of the unforeseen circumstances on the fulfillment of the bill holder's obligations. These and other shortcomings led to the replacement of the French exchange law system by the German one in the second half of XIX century after the adoption of the improved All-German bill charter.

2.6

Bill Circulation in Germany

AFTER THE ADOPTION of the All-German bill charter in 1848, when the French influence on exchange and commercial law was generally reduced⁴⁰⁰, the German period in the bill's circulation history began. The German exchange law system influenced the bill circulation in Hungary, Bulgaria, Romania, Portugal, Sweden, Norway, Denmark, Switzerland and Russia. The main features of the German exchange law system consisted in more attention to the formal aspects of the bill obligation, which became abstract and not connected with the reasons for its origin, and also in the acknowledgement of the promissory note and bill of exchange equality.

While the German general civil legislation continued to be guided by the Roman law traditions, the commercial legislation was gradually released from its influence. The German business traditions and commercial law sources date back to the shop arrangement of the Hanseatic League with its strict regulation, which affected the bill circulation formal aspects.

Let's consider the social and economic preconditions of the bill operation appearance in Germany. The Baltic Sea navigation had been developed since X century—this period is called an epoch of Frisians and the sea itself—the Frisian Sea. The main Frisian trade route was along Rhine, whence they went to England and Northern France; their trade centers were Cologne, Mainz, Worms and Dorestad. In the medieval period, each trade city conducted its own commercial and customs policies independent of the central royal power and signed trade agreements with other cities and states in the interests of its own merchants, trying to get them the

free trade right. Trade cities did not grant any privileges to foreign merchants, who had no right to trade in retail and build commercial relations among themselves without the intermediary of local merchants. They were seldom allowed even to take their goods through the city, and had to leave them in the city for sale (the so-called "staple right").

As there were numerous dangers, trade caravans, equipped by separate German cities, were well-armed. The international trade safety could be guaranteed only by the joint efforts of German cities. The first such agreement between Lübeck and Hamburg, because merchants especially suffered from robberies from Denmark and Holstein, was concluded in 1210. In 1253, a similar agreement was signed between the ancient Westphalian cities, Muenster, Dortmund, Sest and Lippe⁴⁰¹. In the second half of XIII century, the trade association of German cities, called the Hanseatic League (Hansa)⁴⁰², was already quite developed. The Hanseatic League members were granted certain privileges. For example, the Hansards had the right not only to freely come to Flanders, but also to trade in retail there.

After the creation of the Hanseatic League, one more system of commercial routes through the North Seas alongside with the Mediterranean Sea trade routes appeared. These trade ways connected Scandinavia, Poland and Russia with England, Flanders and Brabant. The North German cities, where Hansa trading posts were located, were the main trade intermediaries in the North Seas, similar to the Italians in the Mediterranean Sea. The Hansa merchants also visited Champagne fairs for establishing trade relations with the Venetian and Genoa merchants, and when the Italians started to search for direct sea ways to Flanders and England, the Hansa merchants opened a route to Venice for themselves.

The goods were transported by rivers (Weser, Elbe, Oder, Vistula) from internal Germany to the seaside cities (Hamburg—on Elbe, Stettin—on Oder, Danzig—on Vistula). These cities together with Lübeck, which had an output to the Baltic Sea, played the leading role in the Hanseatic League. Cologne, Magdeburg and Frankfurt were also large trade centers. The Hanseatic League was strengthened by the near-Rhine fairs. They were crossed by the trade route from Italy to Flanders—to the cities of Worms, Strasbourg, Speyer. The fair in Frankfurt am Main, which was visited by many merchants from the Southwest and the Northern parts of Germany, became the main German international fair at that time.

In XIV-XV centuries when the Hanseatic League reached its peak, it supervised the trade in the Baltic and North Seas. It comprised more than 70 cities, though only some of them played a leading role in international trade. The Hansa merchants imported up to 76% of the exported cloth into England. In Flanders, the Hansa office in Brugge also carried out large trade operations, and in the Scandinavian countries, the Hansa merchants became the main trade intermediaries; they also visited Northern Russia, particularly Novgorod. They were given great privileges in these countries, which

enabled them to virtually monopolize trade in these countries, preventing competition from both local and international merchants⁴⁰³.

The Hansa trade differed from the Mediterranean one mainly because the Mediterranean cities constantly competed with one another, while the Hansa merchants established a strong union. Not wishing to incur the responsibility for the actions of other cities, they declared that they are as much the union as the free confederation, created for promoting trade and navigation.

In addition to Eastern goods, mainly luxury articles prevailed in the Mediterranean Sea trade, while the Hansards traded mostly agricultural products, which were convenient for waterway transportation. English wool, the Norwegian wood, the Baltic rye, leather, resin and other raw materials are examples of the materials Hansa merchants traded. However, in F. Brodel's opinion, despite the activity of the Hansa merchants, the North European countries remained poor compared to the Mediterranean countries⁴⁰⁴.

As M. Weber points out, Hansa consistently pursued its trade policy, which was based on several principles. Only the citizens of Hansa cities had the right to privileges. The Hansards were engaged only in commodity trade and not in money and bank operations, as, for example, the Florentines⁴⁰⁵.

However, the Hansa merchants' intention to monopolize international trade led to the decrease of the volume of the independent international trade in most European countries in XIV-XV centuries and the significant reduction of their trade centers and markets⁴⁰⁶. Such situation could not last long. The rapid economic development of the European countries revived the own trade capital and merchants, who wanted to get beyond control of such foreign trade monopolists, as the Italians or Hansards. This caused the decline of the Hanseatic League.

In particular, in England during the queen Elizabeth's reign the Hansa merchants lost all their privileges and their representation was closed. Similar changes also took place in the Scandinavian countries. In Denmark the own navigation was developed and the king Hristian IV deprived the Hansa merchants of all trade privileges. Hansa lost its influence in Sweden and Russia, where after the closure of the Hansa trade office in Novgorod (1494), the German merchants were replaced by the Englishmen and Dutch. In XVI century, the major Hansa cities actually lost their trade significance, though the formal Hanseatic League liquidation occurred much later (in 1669) at the diet of the Hansa cities⁴⁰⁷.

The Hansa decline caused an economic lag of the North, and in the second half of XVI century, a lot of Italian merchants appeared in Germany. Bearer bills, issued for payment in the North, were constantly in Venice. Florence that testified that in XVI century, the trade balance was in favor of Italy⁴⁰⁸. However, in the 1590's, the

situation changed and the Protestant North turned to be in the exclusive position. Thus Northern Europe of the reformation period won the Mediterranean economy, despite the fact, as F. Brodel pointed out, that it had not discovered America or the ways to Indonesia, Japan and China (this merit belonged to the Portuguese), and did not invent the instruments of capitalism (particularly the bill), which were created in the Mediterranean⁴⁰⁹.

As for the appearance of the bill in Germany, there was a long popular belief that it got there from Italy and France through the fairs at Lyon and Besançon or, through Antwerp and Brugge (where there were a lot of Florentine campsore). Bills began to be used in such German cities as Botzen, Nuremberg, Augsburg, Frankfurt-am-Main and Hamburg. In Germany, money exchange was not as free as in Italy, which hampered the banking development. Moreover, Hansa focused not on fairs, but on the system of permanent warehouses and commercial centers, therefore the transfer of trade and financial demands did not lead to further development. The Italian influence on German bill operations also became apparent in the terminology of the old bill charters and in the fact that even in 1711, the exchange bulletin of bill rates was issued in the Italian language in Leipzig⁴¹⁰.

Despite that, there is a well-grounded theory created by M. Neumann and O. Stobbe's, according to which a special bill form had been used by the Hansa German merchants in XIII century, irrespective of the Italian influence. The theory's authors believed that in the north of Europe, the bill's origin was caused by the requirements of money circulation and not trade. It independently developed in various forms (on the basis of the ancient chirograph), and was a domiciled promissory note⁴¹¹.

This theory was developed in XIX century by M. Neumann, who analyzed ancient German debt documents of XIII-XIV centuries. It was mainly debt obligations, issued by cities and trade societies (sometimes to bearer), which were based either on the goods purchased or credits with the debtor's obligation to return the debt without currency exchange in a certain place at a specific time (for example, at the nearest fair in Frankfurt). It often occurred that a debtor, not being in the payment place, ordered the debt repayment to his partner, whose name was specified in the documents. Occasionally, the creditor also appointed his representative for the debt receipt; thus in German debt documents, the third party appeared. In 1313, the creditor Johannes Rufus, who was sent from Lübeck to Brugge, mentioned a debt obligation for 30 guldens. In the document of 1350, similar to a domiciled promissory note, Arnold Foet, a member of the Ralsunder city Council, undertook to pay the sum for two members of the Lübeck City Council (which he had received from them) to a third party in the Brugge city. Merchants from different German cities created numerous trade societies, the members of which issued remittances for the sent goods. These documents became especially important for collecting the customs duty and the church tax in Prussia, Lithuania and Poland in XIV-XV centuries. Such documents often required the consent to their acceptance for payment, which resembled the acceptance of a bill⁴¹².

The main center of using similar documents was Brugge, the largest security market in the north of Europe in XIII-XV century, where during XIII century, many Italian campsosores operated and bills of the Italian type were well-known. The German dealers from the Hanseatic League cities often appeared in Brugge as well⁴¹³.

As the Hanseatic League merchants conducted commercial activity in different countries, they had to find safe ways to transfer money. However, though there was money exchange in Germany, foreigners were not allowed to participate in this practice. The right to be engaged in such exchange belonged only to special associations (*Munzgeschlechter*), and only members of these associations (*Munzbürger*) could be changers⁴¹⁴.

Otto Stobbe (1831-1887), who supported M. Neumann's view point, cited the text of a document similar to the domiciled bill, issued by the city of Lübeck in 1283⁴¹⁵. This document's form resembles not as much the bill as a notarial contract between the Papal agent, who collected the tithe, and the Lübeck city representatives. However, its contents correspond to the bill agreement's essence:

"The city of Lübeck is the payee and drawee. Its representatives concluded an agreement that the city takes for storage the sum of 1500 marks in Lübeck denarii (at the mark rate of 16 Lübeck solids) and assumes to return in due time (the day of apostles Phillip and Jacob) 128 real Turin livres to the Papal agent Rajnerij, or to the person sent by him or any other bearer of this document, thus undertaking the full and unconditional responsibility for all possible losses. The place of payment is appointed the city of Brugge in Flanders"⁴¹⁶.

Though this document is slightly similar by its form to the bill, it mentions both the remittance and the exchange of one currency into another. M. Neumann quotes several other documents, the letters of Morneveg, an authorized ambassador for Lübeck affairs in Brugge, dated 1290, which also contain all bill agreement attributes⁴¹⁷. The Lübeck Council borrowed about 150 marks from two inhabitants of Hamburg. Morneveg adds that he gave a special document, *litteras patentas*, to the creditors and promises to return the borrowed money on first oral demand, if it would not be paid in Lübeck. Therefore, Morneveg requested the Lübeck Council not to cause him additional expenses and pay the specified amount either to the creditors or their agent, who would present the mentioned *litteras patentas*.

The letter contents show that the documents *litteras patentas* performed the bill function. A debt loan with payment in another place and in another currency is seen. Morneveg even mentioned the creditors' right to recourse, though in this case the term "*cambium*" was not used. According to M. Neumann, this circumstance testifies that the bill, used by the Hanseatic League merchants, developed irrespective of the Italian merchants' bill, otherwise the Italian terminology would have been used. However, most German researchers, including W. Endemann, do not acknowledge

M. Neumann's documents as bills because they do not use the *cambium* concept. The same opinion was shared by P. P. Citovich, who considered M. Neumann's arguments unconvincing⁴¹⁸. These objections are rather formalistic and substitute the bill agreement's essence by the Polemic about the use of the term "*cambium*". The remarks of W. Endemann are more reasonable in this context. He pointed out that German debt documents of XIII-XIV centuries not only do not have the concept "*cambium*," but also the money exchange idea itself (*permutatio pecuniae*), which was neglected by M. Neumann. Whether the German debt obligations and money remittance documents in XIII century could be considered as bills remains unsettled. Though some of them really resemble the bill, weighty proofs of the willful and purposeful isolation of bill operations among other similar operations are unknown⁴¹⁹.

New data on this issue appeared when G. de Marez found more than seven thousand documents dated 1249-1291 in the Ypres city archive. They were probably the remains of the credit records archive. Each of these documents named *littera obligatoria* or *lettre de foire* consisted of two parts: the debtor's debt acknowledgement and the payment obligation. Both of these parts were written together and then were cut off from each other in zigzag fashion. Documents were public, and they were made in the presence of the city authority representatives and addressed to all: "Let everyone who will see this document know that such person assumed obligations . . ." One of the parts of the cut document was kept in the city archive. Similar documents were widespread throughout the countries of Northern Europe, particularly in Flanders and England, which served as a ground for calling them the Northern bill type unlike the traditional Italian bill⁴²⁰. Though in these obligatory letters, the concept "*cambium*" was not present, it is difficult to completely deny the similarities between the Ypres documents and the bill agreement.

The arguments in favor of the special type of northern bill, which was widespread among the Hansa merchants in XIV-XV centuries, contain even more evidence of the obligate appearance of bill operations due to certain economic relations, which developed simultaneously in Italy and Germany. They also confirm that the bill obligation's forms arose in Germany without Italian influence⁴²¹, though after the Hanseatic League's decline, the Northern type bill was gradually replaced by the traditional Italian type bill⁴²².

From the end of XVII to the beginning of XVIII centuries, the bill circulation in Germany was long influenced by the Italian and French exchange law⁴²³. Therefore, it can be considered that the distribution of bill operations in Germany occurred under different circumstances than in Italy or at fairs of France.

In J. Bogobowicz's opinion, the first attempts of the codification of the German exchange law date back to the Hansa cities⁴²⁴. However, the systematization of the German commercial and exchange law based on the trade customs began only in XVII century. In 1654, the Nuremberg bill classification was adopted, in 1682 the Saxon trade charter was adopted in Leipzig, in 1739—the Frankfurt bill classification and in 1778—Augsburg's⁴²⁵.

The specific development of the German commercial and exchange law was caused by the fact that after the Hanseatic League's decline, the historical conditions in Germany were adverse for the promotion of trade relations. Constant wars, peasant's revolts and the Thirty Years' War led to the lower material well-being of the German cities on the Rhine and Danube. Commercial activity was not as active in Germany as in the Italian cities, and the royal power was not as strong to care of the trade growth as it was in France. In such conditions, the royal power's struggle with the German feudal dissociation led to other consequences—the emperor's power weakened, and by the beginning of XIX century, Germany was not a uniform state, but rather a number of separate different size princedoms. The elaboration of the legal groundwork for trade and financial-credit activity was unsatisfactory, and until the end of XVIII century, not one German princedom had created its commercial code. Only numerous charters were published, most of which were bills (56 such documents are known)⁴²⁶.

The weak central power in Germany restrained the unification of the norms of the customs-based law, and the orientation to the Roman law traditions long delayed the development of the German commercial law. The Roman law revision began only at the end of XVII century, and the awakened national consciousness called for the national customs-focused law and its formulation in the form of separate charters. However, combining the local law customs with the Roman law elements resulted in even greater legal isolation of separate German princedoms.

Only some German commercial law institutions were subject to state regulation until the end of XVII century, and the legal registration of the Prussian civil law in 1794 became the first attempt of its codification. The important stage in the German exchange law history was its transformation into the common law, the operation of which was not limited by the social set-up. It was stated in item 4 of the Brandenburg bill charter that all persons who signed the bill, regardless of their social status, should abide by the norms of this charter⁴²⁷.

In France, commercial law pursued the same purposes as civil and criminal law, therefore, as V. A. Udintsev pointed out, the objective commercial law idea, being developed in parallel with the civil law reform, remained the form without the contents. In Germany, the commercial law was created for national unification, and thus promoted the revival of German principles of civil law, which were long suppressed by the Roman law influence. The development of commodity-money relations showed a significant difference between the Roman civil law and commercial law, which focused on the real practice commercial activity⁴²⁸.

The distribution of Protestantism, which rejected the Catholic doctrine on interest-bearing loans, was one more historical feature of the exchange law development in Germany. Therefore, in the Leipzig bill charter of 1682 (item 4), the promissory note was legally acknowledged equal to a bill of exchange⁴²⁹. A written debt obligation similar in its essence to the Hansa merchants' obligatory letters and different only by the "bill" name was considered a bill in the German commercial and exchange law.

As a result, a debt obligation was supported by the exchange law severity, particularly by the severity of collection, which related not only to property, but also to a debtor. This severity was also transferred to other debt documents if they had a bill inscription (*Wechselclause*), which confirmed the debtor's consent for the bill collection swiftness and severity to be applied to him.

The idea that a bill inscription can transform any debt document into a bill caused not only an excessive attention to abstract, formal aspects of the bill obligation, but also the validity of the promissory note (the so-called "dry" bill) in Germany. In France and Italy, a promissory note was always outside the law and prosecuted by the Catholic Church as concealing a usurious interest-bearing loan. Thus the Protestant influence in Germany released the bill from many medieval restrictions, which contradicted real trade requirements.

The bill became formal without material circumstances of its issue, and the bill's *distantia loci*, money transfer from one place to another, lost its significance. Moreover, the bill gradually dissociated from trade operations, becoming a pure means of credit for all persons who could assume debt obligations. The bill's capacity became equal with the civil legal capacity in Germany. If the French Ordinance of 1673 did not consider the bill capacity (it was not required, as bill capacity related to the trade capacity and not to the civil one), then it was determined in item 1 of the Leipzig Bill Charter of 1682⁴³⁰.

The end of XVIII century witnessed the first attempts of generalizing commercial law. In particular, the trade and bill charter (*Merchantil-und Wechselordnung*) was published for Austrian lands in 1763, and the code "The General Land Law" (*Allgemeines Landrecht für die Preussischen Staaten*) was adopted in Prussia in 1794.

There was a general growth of the German industry after the Napoleonic Wars, when expanded commercial relations between separate parts of Germany required removing commercial restrictions. Hereupon the Customs Union was created, which played the main role in updating the German trade legislation. The first meeting of the Customs Union was held in 1836. The Württemberg representative addressed the meeting with a statement that the trade legislation should be coordinated. However, his offer was not supported because most representatives were not authorized to discuss this issue. The matter was again discussed at the following meetings, as merchants' representatives were not satisfied that the current civil law standards did not correspond to the real trade requirements⁴³¹.

Projects of various bill codes existed at that time, such as Silesian (1841), Braunschweig (1843), Prussian (1845) and others (12 such projects were proposed in all). The Customs Union conference of 1846 decided to use the Prussian project as a basis for unifying the bill circulation norms and linking the bill charters of different German states. In 1847, the Prussian government suggested creating a special commission of representatives from some German states for the elaboration

of the all-German bill charter in Leipzig, based on the amended project of the Prussian bill charter, which originally comprised 300 Clauses and 100 Clauses after its reduction⁴³².

On November 24, 1848, the bill of exchange charter⁴³³ (*Wechselordnung*), worked out by the commission, was adopted by the national assembly of Frankfurt am Main, and became binding for all German states on May 1, 1849. However, when the charter was being introduced in separate German states, some deviations from the original text occurred. It finally led to the non-unification of the German bill law.

Therefore, the commission gathered in Nuremberg in 1856 for the elaboration of the all-German trade provisions. The Union council of the German states decreed on February 19, 1857 that this commission should make comments on the disputable issues of the bill laws. After that, the commission adopted eight provisions, known as Nuremberg innovations ("The Nuremberg Novels"), about which the separate German states were informed by the Union Council's decree dated January 23, 1862. After the creation of the North German union in 1867, it was decreed on June 5, 1869 that the bill charter, elaborated by the Leipzig conference, was binding for the North German union. In 1870, its validity was extended to the large Baden and Hesse duchies; in 1871 and 1872, it was extended to Bavaria and Alsace-Lorraine, respectively. Thus it became the general law for the entire North German Union. In compliance with the law of June 5, 1869, on the introduction of the all-German bill charter, the local bill regulations of the states kept force only as addenda to the operating bill charter⁴³⁴.

Let's examine principal provisions of the all-German bill charter, elaborated in view of the main requirements of the trade-commercial activity. This document specified important bill attributes, which enabled states to determine the application scope of the bill rules. In compliance with this charter, any debt document with the "bill" inscription was acknowledged as a bill. It meant that the debtor agreed to the debt's strict collection at his non-payment. There were two equal kinds of bills: a promissory note (*Wechsel*) and a bill of exchange (*trassierter Wechsel, tratte*) (Clause 98).

If in the French legislation, the bill had a certain relation to a simple obligatory note and required the reason for its issuance, then according to the German law, the bill became a completely abstract obligation without any relation to its issue ground. The bill was separated from material relations and could not be rejected due to any circumstances of the commercial ties developed between the bill agreement participants. The legal relations caused by the bill were based only on the data which was in the bill text itself (Clause 4). All other agreements concerning the bill's issuance were not considered an object to be regulated by the bill legislation.

The bill became a unilateral obligation, and a remitter (or an endorsee) got only the rights together with the bill (Clause 45), while a drawer, an acceptor, an endorser and an avalist only had responsibilities towards the bill holder. The remitter's rights were absolutely independent, and the bill holder could accept only those objections which were based on the bill text itself (Clause 82).

An acceptor was considered as the main debtor of the bill of exchange, and the responsibilities of the drawer and endorsers mattered only as a guarantee in case of the acceptor's default (Clauses 23, 49, 81). The holder had the right of the transfer of bill claims, except the cases when it was directly prohibited in the bill text (Clause 9). As Shershenevich noted, due to the bill's constant circulation and its transfers from one person to another, its transfer ability (unlike the French bill law) became a common bill property⁴³⁵. At the same time, the blank endorsement (Clause 12) and the protested bill endorsing (Clause 16) were allowed, as well as bills valued on the bill drawer himself, but with *distantia loci* (Clause 6.)

The circle of people who had the right to assume bill obligations considerably extended due to the alteration of the notion of the bill's ability. If earlier the bill's ability restrictions were adopted for preventing the bankruptcy of thoughtless creditors, then by time of the all-German bill charter issue, it became obvious that they prejudiced the rights of bona fide creditors. Therefore, the passive bill's ability was made equal to the civil legal ability. For this purpose, the list of the bill debtors' objections against the creditor's demands was significantly reduced (Clause 82), and allowed recourse in the order determined by the bill holder (Clause 3)⁴³⁶.

The bill debtor's interests were also reflected in the all-German bill charter. In particular, it related to the limitation of the bill obligation liability term (Clauses 77-79)⁴³⁷. Upon this term's termination, if the bill was not protested, only an acceptor or a drawer of the promissory note remained the liable party (Clause 83). The all-German bill charter was characterized by its precise and laconic formulation (100 clauses).

This charter's formal provisions (especially of the bill text in Clause 4) can be mentioned among its drawbacks. In case of the non-fulfillment of these formal requirements, the debt obligation ceased to be considered as the bill that threatened the interests of inexperienced creditors. The same relates to the interdictions of bills to a bearer, bills with a term, depending on some events, the time and occurrence of which are impossible to foresee (Clauses 4, 96), and an interdiction of bills valued on the holder himself without *distantia loci* (Clause 6). It was easy to bypass the last interdiction, having fictitiously specified another place of the bill issue. There were shortcomings of the charter, such as large bill demand terms, the difficulty of determining the bill prescription for different categories of the bill debtors (Clauses 77-79, 98) and the endorsers' release from the civil responsibility in cases of the termination of the bill prescription term (Clauses 83, 98)⁴³⁸.

Despite the enumerated weak points, the all-German bill charter was undoubtedly a new step in the history of the bill legislation. The German bill law became very popular, replacing French bill law traditions. The bill law was adopted in Sweden in 1851, in Finland in 1858 and in Serbia in 1860.

The all-German commercial code (*Allgemeines deutsches Handelsgesetzbuch*), consisting of five books, was adopted in 1860. It was presumed that any of the German states, including Austria, could use both of these laws, and that would lead to the unification of the trade legislation. However, the German states made their

amendments at the introduction of these laws, which impeded the unification of the German trade and bill law. On April 22, 1871, it was decreed that the all-German commercial code became common for all Germany⁴³⁹.

The bill laws of Belgium (1878), Denmark, Norway, Sweden (the Scandinavian charter of 1880) and Italy (1882) were adopted on the basis of the all-German bill charter. This charter's norms also regulated the bill circulation in the Austro-Hungarian Empire. Thus the formation of the German system of the bill law was finished in the 1870-1880's.

2.7

The Evolution of Bill Operations in Northern Europe (Antwerp and Amsterdam)

IN EUROPE, CREDIT and bill operations developed in two ways following two different traditions. The first one, the classic Italian bill tradition, related to Geneva, Lyon, Genoa and Amsterdam. The second tradition related to the Northern bill type (letters of commitment), and led to combining the Italian bill with credit operations instruments which had been developed during the Hanseatic league times in the course of financial markets activity in Antwerp and London.

If the economic history of Europe of the XII–XIV centuries may be called the Italian period, the period of the XV–XVI centuries is the Hispano-Portuguese period. That was due to the discovery of America and its colonization by the Spanish, and the creation of Portugal's colonial empire in the Indian Ocean, where Portugal occupied all major trade ways of the Arab and Indian merchants. The conquest of Greece by the Turks in 1453 signified that Italy lost its land tradeway to the Orient. The discovery of the sea route to India, which was first used by Portuguese seamen, deprived Italy of its traditional intermediacy in the trade with Eastern countries. Thus Italy lost its influence, its intermediary position in the trade with the Orient taken up by France and Holland.

After the annexation of Portugal by Spain in 1581, the Portuguese colonial empire decayed, and in the second half of the 16th century, the Dutch seizing Portuguese colonies prevailed in the Indian Ocean's area. The Netherlands boomed; Dutch merchants penetrated further in the Mediterranean Sea⁴⁴⁰. While the significance of

Northern Europe rose, the economic significance of the Mediterranean area decreased. The Netherlands' enrichment was due to its colonial trade to a considerable degree. As a result, Antwerp's (and later Amsterdam's) trade and economic significance increased.

After the Hanseatic league was created in the XVI century in Northern Europe, another system of commercial relations unified German trade cities with Flanders, Brabant and England. As it was already mentioned, M. Neimann and O. Stobbe suggested a theory that the special form of northern bill had been used by German merchants of the Hanseatic league since the 13th century, irrespective of Italy's influence. Later this theory was proved by findings in the archives of the city of Ypres, where G. des Marez found several thousand of documents of the 13th century called *littera obligatoria* or *lettre de faire*, spread in the countries throughout Northern Europe, particularly in Flanders and England⁴⁴¹.

The significance of Antwerp's financial market in the 16th century resulted from Brabant's fairs. When Champagne fairs declined, the Venetians, Genoese, Castilians, negotiants from South France and the Hanseatic merchants came to Brugge, which became a world market similar to Venice. These two cities were the leading centers of international trade: Venice was the south center, and Brugge was northern one. As distinct from Champagne fairs that were carried out from time to time, trade operations in these cities were carried out on a continuing basis during the entire year.

Even in the 15th century, a number of merchants from Italy, Spain, Portugal, the Netherlands, Germany and England, seeking to expand their presence on the commodity and financial markets, visited fairs in Antwerp and Bergen-op-Zoom. North European merchants developed their financial systems at these fairs, which included some elements derived from the Italian system; however, they were considerably different from the Italian one. The traditional North European letters of commitment that H. Van der Wee called debt warrants were used in fairly ordinary crediting operations⁴⁴².

Thanks to commercial relationships with Italy, Antwerp's merchants knew about bills of exchange, which (as well as giro-operations) appeared in Brugge and Antwerp even in the XI century. In the XVI century, several textbooks in mathematics and accounting (in particular, a well-known Van Mellem's manual in arithmetic) were published in Antwerp, which simplified the expansion of traditional Italian methods of commercial crediting and bill operations⁴⁴³.

However, these credit instruments did not arouse any interest in Northern Europe and were not largely used there. By the beginning of XVI century, North European merchants frequently brought their commodities to fairs themselves and strove to get their profits in cash. Secondly, in Northern Europe, traditions of credit instruments already existed. In the XVI century, a bill was a means of money transfer in Northern Europe. Even since the times of Hansa, the main credit instrument had been a traditional letter of commitment, a document according to which a debtor acknowledged a debt developed from payment in the course of a trade operation. It

was these letters of commitment, debt warrants to the bearer, that had a dominant position at Antwerp fairs.

The shortage of deposit banks in this region was another reason restraining the prevalence of traditional Italian type bills in Northern Europe. However, in the XI century, such banks appeared in Brugge, Bergen-op-Zoom and Antwerp, but numerous restrictions on economic activity (Burgundy's Dukes decrees in 1433, 1467, 1480, 1488 and 1489) and a misrule on the foreign currency market resulted in their decaying during the XV century⁴⁴⁴. Another fact must be noted that in Antwerp, a new center of international trade in comparison with the Mediterranean area, hardly stable commercial companies existed, and the creditor had more risks for not being able to claim against his debtor after the acceptance of a non-cash transaction.

In the early XVI century, a rapid development of international trade began in Antwerp. The economic influence of the city grew, and soon it was in Antwerp (not in Brugge) that the first international stock exchange appeared. Merchants from all around the world came to Antwerp. It was "the entire world in small" and "a continuing fair that merged merchants from other cities and their trade."⁴⁴⁵ The active trade of pepper and England woolen cloth, which were further resold in other North European countries, promoted the city's financial prosperity.

The demand for credits rose along with trade expansion. At first, to speed up the money circulation, a deferral practice in which debt warrants and current accounts common to Antwerp was used. Such a deferral practice increased sub-ledger's possibilities, when even prior to maturity a debtor became a creditor of his creditor. In the XVI century, the sub-ledger's practice was widely spread and local authorities supported it. A possibility to assign debt warrants to the bearer from one person to another existed; the circulation of such warrants also belonged to the sub-ledger's practice.

The bill «to be paid to the bearer» or «to the bearer» appeared more and more frequently in the letters of commitment that circulated at fairs of Northern Europe during the XV century. This provided for a debtor to pay his debt not only against his creditor, but also against any other person having this letter. Handing over such a letter was widely spread, however it must be noticed that at the Netherlands fairs during the 15th century, such letters to the bearer circulated among the limited North European merchants—they were well-known as reputable merchants, who perfectly knew each other in person.

It was not mandatory to pay the debt in cash; it was frequently paid with a letter of commitment assigned to a third person. A merchant who did not have enough cash could make a payment by such a letter assignment (provided that he had letters to be paid). This allowed one to limit cash money usage, and it was of special importance when the metal coins were in deficit. The letter of commitment to the bearer was neither legally valid nor prosecutable in case of non-payment of the debt. To make such a letter legally valid, it was necessary to notarize it in the magistrate

or by a notary, which did not promote the expansion of letters of commitment. That is why demand was formed for legal protection of a bearer. According to customs, in case of non-payment, the power of attorney from the first creditor was needed to file a claim.

In 1507, a group of established Antwerp business men made a group decision (which was presented to judicial authorities' representative), according to which the debt warrant's holder had the right to file a claim to a person who transferred the money, and was obliged to have the power of attorney issued by the first creditor. In the early XVI century, Antwerp's magistrates equated the procedure of the debt warrant assignment to a loan, which allowed them to prosecute the debtor. Thus informal debt assignments, or cessions (Ital. *cessio*), became formal, and a new holder of the letter of commitment did not deal with the first creditor, the document's seller⁴⁴⁶.

This method was later adopted by merchants from Brugge and Utrecht, and the Emperor's decree from March 7, 1537 expanded it over other cities⁴⁴⁷. Another important step was the financial security of a bearer. Its core was that the official deed of conveyance had legal effect equal to a real payment, and discharged in full the creditor (assignor) from his debt against his own creditor. After having acknowledged the legality of a claim of the warrant bearer to a person who made a remittance, Antwerp's commercial court equalized these two stages of the document assignment. However, providing of the bearer's legal protection resulted in his losing the majority of financial guarantees, as the creditor-assignor was granted a release from his debt. As a result, a provision was introduced in the deed of conveyance, according to which the creditor-assignor had to pay his debt in case the debtor is arrears in paying by his debt warrant⁴⁴⁸.

During the 16th century in Antwerp, this was subject to using of a payment order, which was already known in Holland by that time. The creditor (1) required from his debtor (2) to pay to a third person (3) who was a creditor of the creditor (1). Such an order was not a legal payment and the creditor (1) was granted a release from his debt only after the creditor (3) received the due amount from the debtor (2)⁴⁴⁹.

The trade activity in the first decades of the XVI century related to bills of debt circulation, which were widely used in Antwerp for making payments. The majority of remittances were carried out in the form of payment orders. This practice was used so much that in 1537, it was considered whether to legally authorize this payment method. On October 31, 1541, the Emperor's decree was issued, in which the following was noted: *"We order that those who accept a bill must pay the money indicated in it . . . in such a manner that it will be possible to present a payment and other liability documents in the form of payment orders that the creditor in his discretion may accept or reject against bills and other contract liabilities between merchants; after the payment order is received, the creditor remains a debtor until the merchant receives the real money"*⁴⁵⁰.

The use of payment orders promoted in Antwerp by legislative bodies at the end of the XVI century and in the early XVII century was so spread that "The City of

Antwerp's Customs Book" (1608) was amended by a special article in which it was noted that if payments are effectuated using commercial documents that are handing over (payment orders), and if in this transaction four, five or more persons participate, then all subsequent debtors who handed over their debts (as creditors-assignors) have the right of demand as creditors bearing liabilities with the first debtor⁴⁵¹.

Securing payment orders became the background for the growing capability of debt liabilities circulation, as they granted more rights for a new holder of the document to make a claim for the previous holder. However, a lot of matters were left unaddressed, particularly regarding proof of payments made with payment orders. In XVI century record books, a distinct difference between handing over a debt warrant as a final payment and as a payment order can be seen. In the first case, the creditor (1) was discharged in full from his debt to his own creditor (2), in the second case he was not.

Debt document circulation growth in the second half of XVI century provided for financial operation anonymity, and the failing of official records resulted in difficulties in finding a creditor (who issued the payment order) from the second payment order. Only the first creditor whose name was written in the document was clearly known. This explains the emersion of a custom to amend the payment order with formal proofs, such as records in accounting books or in registers presented during court hearings⁴⁵².

It was only one step from attestation of this kind of the payment order to writing an order on the debt warrant itself, but in Antwerp in the 16th century, it was not made despite the fact that the custom to sign in the bottom of a debt warrant was already used. The words *als principal* (or *als borge*) were added, which implicitly corresponded to the guarantee. As usual, creditors-assignors used these methods while handing over debt liabilities⁴⁵³.

Since the bill has been used more frequently in Europe in the second half of XVI century, the further efforts to improve credit and finance operations in Antwerp were aimed at bill circulation development⁴⁵⁴. An Antwerp judge's letter to the Emperor dated 1537 mentioned rapprochement of these two payment methods; he pointed out that an accepted bill had the same legal force as a duly documented debt warrant. The Emperor's decree of 1541 did not differentiate the debt warrant and the bill. However, an analysis of court cases of the second half of XVI century proves that at that time, Antwerp's merchants ordered payments mainly on debt warrants and very rarely on bills because merchants from Northern Europe did not use bills frequently.

The situation changed toward the end of XVI century when the bill became the main credit instrument, and the significance of letters of commitment declined. This resulted from the penetrating of North European merchants to the Mediterranean sea, and activating of financial operations in Genoa and at Piacenza fairs⁴⁵⁵.

Credit document circulation in Antwerp assumed such a proportion that while the bill was assigned, the guarantees greatly enhanced. To provide the maximum financial security of such an assignment, one of the articles of "The City of Antwerp's

Customs Book" laid down the *avallo* system, in which all creditors who used payment orders one after another were indicated in a bill, and remained under obligation with the last debtor⁴⁵⁶.

However, the system's disadvantage was the necessity to know all creditors who issued payment orders in advance. The volume of financial and credit operations grew, which complicated this procedure. The solution was the endorsement practice implied at Antwerp's stock exchange. Despite the fact that at that time bill endorsement was very well known, it did not expand, and the first endorsed bills resembled payment orders traditional in Northern Europe:

*"Me, Robert Rag, the undersigned, have received from whom I ordered to receive . . .
(amount).*

*April 20, 1611.
Signature—V. Salb⁴⁵⁷."*

Endorsing techniques developed in Antwerp as payment orders system were common for XVI century, and gradually acquired legal support. Since the beginning of XVII century, bills of exchange had been actively traded.

Bearer debt documents promoted misuse, but the change in definition from "to pay to a person or endorsee" to the definition "to pay to a person or by his order" decreased this risk, because on the document's overleaf, the endorsee's name and the signature of the merchant who first assigned the bill, as well the endorsee's name and the signatures of merchants who assigned the bill second, third and further were marked. Due to the improved legislation, the endorsement practice flourished in Antwerp. A new innovation on Antwerp's financial market was bill discounting (this issue will be studied in a separate chapter). Antwerp's financial market became a foundation for the next step forward for traditional North European letters of commitment.

However, the Eighty Years' War and the conquest of Antwerp in 1585 by Alessandro Farnese, Duke of Parma, decreased its economic significance. Some business recovery had been seen since 1609 during the Twelve Years' Truce, but the war recommenced and Antwerp decayed. In the early XVII century, the trade shifted to Amsterdam, as the majority of Antwerp's merchants emigrated there.

These circumstances and several crises on the foreign currency market in the end of XVI century were the reasons for withdrawing the letters of commitment's usage practice in Amsterdam. Perhaps the methods known in Antwerp seemed strange, and people did not believe in them. It is also possible that the implementation of the Italian tradition (as more reliable and proven during several centuries) in Amsterdam resulted from the war and chaos on the currency market. The financial influence of Genoa and Piacenza fairs must also be taken into account.

Debt warrants to the bearer—the traditional instrument of commercial credit of Northern European merchants—were in use in XVII century, especially in cases in which the first creditor was a state body or a reliable person. Similar documents were

in circulation in England during XVII century as well. These were so called *goldsmith bills*, *exchequer bills* and other written debt liabilities⁴⁵⁸. It was in England that this Northern European tradition developed, as opposed to Antwerp, the financial market which lost its importance due to political rather than economic reasons.

Another tendency of credit operation methods alongside with the Northern European financial market developed in the south of Europe, where in the XVI century, the trade expanded at fairs in Geneva, Lyon, Castile and Genoa⁴⁵⁹. Despite of the fact that these fairs were under control of merchants-bankers, their prosperity and foreign currency bill operations resulted from European trade, which promoted the appearance of a new generation of merchants from South Germany, Portugal and Spain.

Bills were instrumental in trade operations, but the acceptance credit was complicated and required extra costs. Hence why even in XV century, a redraft notwithstanding the primary bill appeared⁴⁶⁰, containing an inland bill, as well as bills to carry out operations between fairs. However, these documents were written in the form of a bill. They were latent forms of loans at interest. The acceptance credit became more expensive and thus promoted searching for new forms of bill operations. Remaining a credit instrument, the bill was widely used for international transactions. It was in the latter field that the most innovative forms of bill operations developed.

Italian banks' experience, particularly their method of operating all accounts in the same nominal currency, was adopted by Geneva fairs, on which a utility-type unit, the Savoy golden ecu, was used to make payments. The next step was made in XVI century: real money units were replaced by a nominal payment unit, the Lyon's mark, which stood for a fixed gold quantity, and *scudi di marchio*, at Piacenza fairs and in Genoa⁴⁶¹.

At Lyon and Genoa fairs, the official exchange rate was established by merchant associations; after that, settlements began to be carried out by transactions between parties. Since in the south of Europe deposits and currents accounts already existed, the transfer of funds from one account to another (*Ital.-giro di partita*) prevailed in XV and XVI centuries.

This process resulted in organizing of the Bank of Amsterdam, which was instrumental in credit operations of XVII century. By that time, the Antwerp's stock exchange had stopped its operations, and the further development of financial and credit operations in the Netherlands was tightly bound to Amsterdam. Since Antwerp's prosperity resulted from Portugal's trading relationships with India, Amsterdam became an international financial center in which all the trade of Holland was concentrated, as well as a new activity not known in Europe—speculation of shares in the first Dutch trading companies, in particular the East-Indian⁴⁶².

In the first half of XVII century, there were two processes in international financial operations: on one hand, in 1600-1660 the activity of Genoa's bankers flourished

(later it quickly declined); on the other, financiers of Portugal, their main competitors, sought to eliminate Genoas bankers' monopoly on the international currency exchange market. During the flowering period of Amsterdam's stock exchange (which became a leading financial market of Europe), Portuguese bankers of of Hebrew extraction, marrans (the richest of them migrated to Amsterdam⁴⁶³), were instrumental because they promoted the economic significance of the city as well.

The Eighty Years' War (1588-1648) led to a significant deterioration of circulating coins. Merchants avoided cash funds wherever possible, using giro transfers and letters of commitment instead. Local authorities believed that the circulation of poor quality coins resulted from money changers' activity. The decree of January 21, 1609 prohibited it and established Amsterdam's exchange bank (*Amsterdamse Wisselbank*). All payments surpassing 600 florins had to be made through Amsterdam's exchange bank. Non-cash transactions could be carried out throughout Europe (as was formerly the case with cross-cancellation of debts at fairs)⁴⁶⁴. The international operations promoted an expansion of the practice to make payments using endorsed bills in Amsterdam's exchange bank, which made Amsterdam the most important center of money operations of XVII century.

On May 10, 1606, Amsterdam's city advisors noted in the decision records book that the most prepotent local merchants repeatedly insisted on establishing a bank in the city, similar to banks in Sevilla and Venice⁴⁶⁵. The discourse of Tomaso Contarini (1585), a Venetian senator, criticized Antwerp's banking system and supported the idea to create the state settlement bank in Venice, which was a significant influence on the decision to do so⁴⁶⁶.

A new form of a short-time international acceptance credit input by private bankers of Amsterdam was effectuated on the following scheme: bankers announced that they were ready to accept an offer, and then to buy or sell all bills issued to their clients. They assigned it to merchants seeking to speed up payments to buy goods. Private bankers' clients presented guarantees that bills would be paid on time.

The acceptance credit was attractive because bill operations were quite simple, and the bankers were well known in Amsterdam's financial market. The bankers' clients could not only easily receive the acceptance credit (in case of necessity, cash money as well), but also present a bill for payment to the banker and cash it in after acceptance.

Thus a new type of financier of the international scale appeared in Amsterdam. It was different from an Italian type negotiator and was widely used in Amsterdam's stock exchange, in addition to Geneva and Genoa. It was Amsterdam's financiers that influenced the economic and political life of Europe for a long time. During the entire century, Amsterdam's exchange bank was a source of improving methods of financial transactions⁴⁶⁷.

2.8

The Origin and Development of Bill Discounting

COMPARED TO DEVELOPMENT problems of other bill operations, the origin of bill discounting (negotiation of a bill) receives little attention, despite the fact that bill discounting methods relate directly to the general evolution of commercial credit. Discounting operations allow trade and industry to use the advantages (related to the capability to circulate), which differ the bill from other debt documents.

The notion of discounting (derived from Ital. *sconto*) appeared at the end of XIII century in Italy (according to J. Clapham's opinion, even in the 12th century⁴⁶⁸), however at that time, it had a different meaning and was not used for bill operations. The first records of discounts offered for advance payments in trade operations date back to the end of XIII century. They are found in account books of the company Tolomea from Siena. This practice prevailed in XIV century, which is proved by the records in account books of Francesco del Bene and the Medici companies.

These discounts were perceived as stimulation or compensation offered by a goods vendor to a debtor to speed up payments when the payment was postponed or past due. However, neither of the first book-keeping studies written in XVI and XVII centuries, nor in the account books of medieval bankers was the notion of discounting used with respect to a bill trade.

Whether or not to offer a discount to a customer if he makes an advance payment of goods produced discussions among Juris Canonici Doctors. This discussion is proved in the book by Tomaso Buoninsegni, titled "The Tractate About Bank Sellings." It clearly interpreted the notion of "discounting." A discount is offered in trade agreements

when a payment is made in advance (*anticipato pagamento*)⁴⁶⁹. T. Buoninsegni did not mention the discounting in bill operations.

It is clear that the expansion of bill discounting was influenced by the nascence of endorsement, in which a certain interest was withdrawn for the bill amount paid in advance. According to L. N. Nisselovich's, this practice originated at fairs, and the endorsement promoted its prevalence⁴⁷⁰. For a long time, an opinion that the first forms of bill discounting appeared in England in XVII century existed. J. Clapham pointed out that although discounting in its broad meaning was used over a long period of time, it was in England between 1630 and 1670 that the buying of discounted bills, debts transcribing from one account into another, and bank check operations with which one could pay off anyone became significant—all these operations were associated in one place⁴⁷¹.

However, H. van der Wee showed in his studies that the discounting of bills began to be used at Antwerp's money markets, where there were not only improved the methods of endorsement, but also discounting methods. In account books of an English draper Kitson, there is a case when at one of Antwerp fairs in 1536, his agent needed cash. His agent sold a debt warrant (the maturity date of which had not yet come) for an amount at a discount to a third person. This operation may be considered one of the first discounting operations. But bills from Antwerp's fairs prove that discounting was rarely used at that time, and Kitson's agent kept all other debt warrants and bills until their date of maturity⁴⁷².

Since the creditor would like his debtor to pay off his debt as soon as possible, he offered him a discount. In the case that the debtor did not accept it, the debt liability (including the one in a bill form) could be sold to a third person at a discount. Although in the 1530s, such a method was not frequently used in Antwerp, the increase of Antwerp's money market significance over the next decades determined the further development of discounting. This was promoted by the increase in circulation of payment orders, debt warrants and bills during financial crises when the cash money was in demand. In addition, the fact that merchants lengthened payment terms and began to write payment orders not only on warrants and bills whose maturity date came, but also on those whose maturity date had not come yet also increased the use of discounting.

After a special stock exchange was established in 1531, a group of financiers became of significant importance. These so called cashiers received money while paying at the stock exchange, and then made payments on behalf of third parties absent at the time in the city. If payments were made using liquid funds, the cashiers acted as money-changers; in the case of securities, they became brokers. When the number of their clients augmented, the cashiers enabled the clearing system, which allowed them to make giro accounts between clients.

In the last quarter of XVI century, the money trade in Antwerp significantly agitated to deposit funds for the period between fairs. During crises on the foreign currency market, the cashiers bought up payment orders, debt warrant, and bills for

cash at a discount⁴⁷³. If cash was in deficit, they bought up long-term obligations and short-term bills from the bearer whose maturity date had already come, but whose payment was put off. However, this practice is hardly considered bill discounting in the modern sense of the word, because financiers came to the stock exchange only on the day of payment to buy bills and debt obligations with the maturity date; a certain interest retained as compensation for paying in cash.

The source of discounting may be considered the situations in which cashiers were purposeful and methodic in buying up securities before the maturity date in the event of cash shortages. It was widely used, which is proved by examples of discounting debt warrants given in the Menher's manual "The Practical Guide for Accounting and Account Book Keeping," published in Antwerp around 1560 and Mellema's "Arithmetic," published in 1582⁴⁷⁴.

The document of Antwerp's city administration dated March 19, 1560 contains information that bills issued at Lyon's and Besançon's fairs to be paid at the Antwerp fair were actively bought up by the financiers and cashiers at a discount, although the payment date that was appointed at Antwerp's fair was in May. This case may be considered as example of discounting in its contemporary meaning⁴⁷⁵. There are other examples of discounting prevalence. In 1563-1564, Daniel de Brain bought up debt warrants of third parties on a regular basis, with the maturity date in six or even twelve months.

Debt warrant discounting was used more frequently than bill discounting. This may be explained by the fact that debt warrants related to medium-term and long-term credits, as opposed to bills, which were used only for short-term credits.

Nevertheless, in 1576, the bankers Fuggers from Ausburg, who maintained active trade relationships with Antwerp, recorded the payments of bills whose maturity date had not come yet and withdrawing a certain interest taken for an advance payment. The decrees of Antwerp's city administration dated 1600 prove that buying bills in cash was widely used at Antwerp's stock exchange. This prompts suggestions that the origin of goal-oriented policy of bill discounting began there.

It is rather difficult to say whether the practice of bill discounting was established in England because of its influence by Antwerp's stock exchange, or independently (the English methods are considered to be a direct predecessor of the modern system of bank bill discounting). H. van der Wee thinks that this resulted from close contacts between the English company *Merchant Adventures* (and the government of England) and Antwerp's stock exchange, at least before the government of England moved from Antwerp to Middleburg⁴⁷⁶. It is known that bill discounting was effectuated by the Bank of England as well (4.5% of bills from England and 6% of foreign ones), and private English bankers whose discount interest attained 10, 15 and even 20%⁴⁷⁷.

"The General Trade Dictionary" (the first edition was written 1751) proves that the bankers of the City were familiar with bill discounting⁴⁷⁸. Even in the early XVII century in London, the vendors of gold and silver articles began dealing with precious metals as a whole, therefore they influenced the Bank of England's activity. They also

practiced discounting inland bills and checks. The legislation of England regarding granting a loan at interest promoted the expansion of the bill discounting practice, as all obstacles for that were eliminated⁴⁷⁹. Bill discounting operations became one of major sources of profit among the Bank of England's activities.

The advantages of the English system of bill discounting stimulated the French government's effort to establish the national issuing bank in France, similar to the one in England. In 1776, the Pay office for discounting operations was established, and was closed in 1793 during the French Revolution. Its activity stipulated discounting commercial documents with interest going below 4%, managing demand deposits, and issuing reliable checks.

On the model of the Pay office for discounting operations, the Spanish national bank was established in 1782. The operational policy of the English banking system had gradually expanded in continental Europe, and at the end of XVIII century, a special discounting bank was established in Sweden. The old deposit banks were liquidated step by step, since they did not meet the requirements of commercial practice.

At the end of XVIII century, the first discounting pay offices that carried out discounting operations appeared in Germany, but they were called "the plaque for trade"⁴⁸⁰. The reason for such an incredulous attitude to discounting operations was numerous abuses. A case is known when a merchant counterfeited handwriting of other traders, issued bills on behalf of them, indicating fictitious endorsements on them, and signed himself as the last endorsement maker. He then presented the bill for a discount, and the discounter having seen big names and known signatures on the bill accepted readily such a fictitious bill. *Kellerwechsel* appeared, supposedly drawn to Hamburg from other cities (the names of the drawer and remittee were fictitious in them). The operation's participants made endorsements on the bill and then discounted it. There were bills sent by mail to Hamburg from Bordeaux to be presented for payment four days after the issuance, although it took the mail to get from Bordeaux to Hamburg considerably longer at that time⁴⁸¹.

The development of the notion of a discount in the works of French authors of XVII century is also significant. In the book by E. Bamoreau, *The Treatise of Bank Negotiations*, published in 1727, the meaning of the notion discount is defined as a reduction granted for commodities to be paid, or a check or a bill to be sold⁴⁸². It is Jacques Savary who explains it in his book, *The General Trade Dictionary*, first edited in 1723⁴⁸³. He also points out that it was possible to apply a discounting operation to a bill in case of advanced payment.

In the book by P. Giraudeau, Sr., published in 1756, the notion discount was used as an interest calculated from a check or bill's nominal worth for the period during which it could be valid⁴⁸⁴. This meant that the reduction gave incentive for

a bill's advanced payment. The notion discount was used in other dictionaries and encyclopedias of XVIII century⁴⁸⁵.

J. G. Bush's work (1792) mentioned that merchants had previously considered bill discounting unfavorable for them, and tried to keep the bill until its maturity date. Fifty years later, the amount and the volume of commercial operations considerably grew, which stimulated the bill discounting expansion⁴⁸⁶. Karl Gunter Ludovich (the second edition of his book was published in 1768) pointed out that a discount meant a reduction offered when a bill was paid in advance⁴⁸⁷. Practically speaking, the question here is two different operations. In the first case, the debtor gains a profit because he paid his debt in advance. In the second case, the creditor sold a bill (or a check) at the amount lower its nominal worth to have cash available. It was this operation that resembles the modern form of bill discounting.

J. Savary wrote that the notion discount has two meanings, a broad one and a narrow one. In the first case, it was any reductions as a whole; in the second case, it meant acquiring a bill at a discount to gain profit⁴⁸⁸. It is obvious that this allowed R. De Roover to affirm that in the countries of continental Europe, the notion discount acquired a modern meaning only at the end of XVIII century. It had once meant a discount granted by the creditor if the debt document was paid in advance⁴⁸⁹.

J. Savary's definition of discounting had a modern meaning. As far as R. de Roover's point of view is concerned, he interpreted discounting as a reduction interest calculated in advance of a security's nominal worth, which relates to the appearance of banking discount.

Underlining the differences of two types of discounts, the commercial one and the bank one, R. de Roover pointed out that in the first case, the merchant gained profit for returning a part of the sum because the debt was paid off before its due date. In the second case, the creditor sold the money document at an amount lower than its nominal worth to receive cash as soon as possible. According to R. de Roover's, such a method of discounting money documents was practically not used in France. Until 1750, there was a compensation for advance payment in cash called the discount. The discount expansion on the continent relates to borrowing of the Bank of England's experience and establishing one of the above mentioned bank institutions—the Discounting office (1776) and the Spanish national bank (1782)⁴⁹⁰.

As C. Carriere points out, the question here is about the spread of banking institutions. One should not combine unprofitable banks with a day-to-day commercial practice. In addition, P. Giraudeau, Sr. wrote in 1756 that the discount practice was widely used, therefore it may have existed for a long time⁴⁹¹.

A point of view that the prevailing discounting practice in England is explained by the fact that, as distinct from Catholicism, Protestantism was more tolerate of such financial operations. In Catholic countries, particularly France, the discount was not used in an open manner, but rather was hidden under an exchange operation⁴⁹². F. Brodel wrote in this connection that the discount practice that appeared in England

around 1680 was a definitive progress. What Catholic Europe did not venture was what had been done in a legal way. What was undiscovered in Amsterdam was realized by Protestant England, a successor of Antwerp's innovations. H. Van der Wee held to this point of view as well⁴⁹³.

However, the data given by C. Carriere on the analysis of accounting documents of merchants from Marseille, a known international trade center in France, witnesses that in the 1720s, the bill makers dealt with the discount. Among their functions were "commerce, insurance . . . money and bill remittance"⁴⁹⁴. Such a remittance of bills, whose maturity date did not yet come, provided for the discounting operation.

Below is an example of one of Marseille's documents:

*Bayonna,
Bayo and suns
February 28, 1736.*

We agree to offer you 1% commission fees for papers you have presented for us to discount; this fee includes a commission interest and a surety that you turn over, to return in such a manner what you pass to us. Therefore, we turn you over for bills for M. Batelemi Rollan from your city. We ask you to accept these bills further discounting them at 5% a year or lower . . . and we will accomplish a return of bills to Madrid (if you approve this), which will take no more than twenty or thirty days . . . or to Paris for sixty or ninety days . . . or to Lyon, a profit prorated to the term. In the last case, you can have 2% or 1.75%, and this is easier for us to agree with than returning them to Paris.

In other undertakings, you can act in your discretion⁴⁹⁵."

This document, as well as the following one, prove that the operations of exchange and discount were clearly differentiated at that time:

«November 26, 1737

We have received . . . a return of four bills or checks that we have turned over to you along with 14,800 livres from four bills that you turn over to us destined for Madrid.

<i>Pistoles 9,191 livres in 15 livres 4 pistoles</i>	<i>13969 livres</i>
<i>Discount 14,800 livres at 11 months 6 days at 5% a year</i>	<i>690 livres</i>

<i>For your commission fees, security for the above mentioned papers, commission interest and mail delivery-1%</i>	<i>139 livres</i>
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Bcero 14,800 livres

Therefore, our commission is the balance of the extract you have passed to us, which we recognize to be valid. We confirm your calculations, and we are grateful to you for your accuracy. The discount rate of 5% is a moderate one, and the exchange of 15 livres 4 is less profitable, but we have been informed that it will decrease⁴⁹⁶.

Therefore, in the 1730s, the discount was practiced in Bayona and Marseille, but it was never confused with money exchange or with money transfer; checks and bills were turned over and discounted. Below is another example of a document proving that fact:

"Toulouse, August 20, 1745

Since you would like to do a favor to me, discount half of the sum I offered you and return 2,000 piasters to Madrid. I pass you two bills in the amount of 3,500 livres; the total amount is 7,000 livres. You may have the advantage of two days from the date indicated by me. Since I possess a great number of ships requiring significant expenses, in case of selling the whole consignment of my indigo (or a part of consignment that must be sold in this country during a year) . . . you may pass me a part of the bills destined for Paris . . . under the condition of discounting of 0.5% per month⁴⁹⁷."

The commercial and bank discounts are clearly distinguished in this document. A merchant Maloan Belon sends a parcel of indigo to Marseille where a merchant Rou will be selling it during the year. However, Belon needs his money earlier. If he gains profit on a sell at the nominal worth, the sum will be increasing on a pro rata basis with time until the end of the term, and the commercial discount will decrease. The Marseille merchant must also take into consideration that payment terms could change, because at Rou's demand, he will repay the bills in a shorter term to make this advance payment. The cost of every bill, as well as the price for indigo, is changing with time. If the bank discount was 0.5% per month, then the bill would lose 1.5% of its value during a three month period. These two forms of discounts (the commercial form for goods, the bank form one for documents) were closely related, and the documents cited prove that the practice of discounting was widely spread in France during the first half of XVIII century⁴⁹⁸.

Such practices were spread not only in France, but also in Seville, which is proved by the following two documents:

"Francois Kesser de Verdain and Co.

We are sending to you two the first bills of 3,300 and 3,400 livres of Tours which were turned over to Cadiz on the 22nd of the current month by Ccasabon Bayke and Co. (they are all due in Paris in 90 days starting from the indicated date) to

be further turned over to Peshevan for us and for you by the order of the brothers Kaila Solier Verdun and Co. All the necessary documents will be passed to you, and a credit on the basis of 78 1/4 sous for a piastre, in coins 13,699 5/8 will be opened⁴⁹⁹."

This bill's maturity date was 90 days, until the 22th of March. Two months before the term was over, the company Rou sold it. However, the three months discount was not lost (that would be a break of the Rou's company traditions), and this is proved by the following document:

"February 23, 1740.

You have reported to us that you received our remittance of 6,700 livres and two bills that we had credited half to the account . . . you sold them at 67 livres for a transfer, and you sustained losses of 1% (the discount is 6%). Allow us to state that you have acted rigorously. We assure you that if we had happened to be in such a situation, we would have kept these bills until the maturity date⁵⁰⁰."

In this case, the turning over of a bill covers only the discount operation without considering the exchange rate.

Another example of a document from the company of Jean-Baptist Bruni, another merchant, is below. In 1703, Bruni was a debtor to Francois Guirain at the amount of 1500 livres. He had a check dated April 25 of that year. The check value was 1500 livres. After the discount for three months was subtracted (22 livres), it became 1477 livres. Bruni had to credit 22 livres to Francois Guirain's account.

"February 1, 1703.

22 livres are to be paid to Francois Guirain for the 1.5% discount of bills on 1500 livres, due to be paid on April 25. These bills were turned over to him by Kresp.

Bills and checks

Bill for debt to Kresp is to be paid in three months 1600 livres Guirain received on receipt over the counter Kresp's bill for three months 1576 livre. The profits and losses for discounting the bill at the amount of 1600 livres at 1,5% for three months
24 livres (47)"⁵⁰¹

Thus Kresp issued the bill in the amount of 1600 livres for a three month period. Bruni turned it over to Guirain, who received the bill in cash, decreasing the discount for three months (the discount was 24 livres). Accordingly, the account "bills and checks" was credited 1,576 livres over the counter. The name of the account, "bills

and checks," witnesses that merchants did not differentiate these documents at the time, but did not hide the commercial discount under other operations.

Marseille's bills of the 1720-1730s were mainly issued to Lyon and Paris. Bills to Lyon were issued to pay fabric manufacturers from Languedoc, while bills to Paris were issued to pay Northern France's merchants (97% bills from Languedoc were issued to Lyon; 94% bills—from Saint-Malo to Paris and 74% bills—from Paris to Paris). As M. Bloch point out, a mechanism of making profit common to the times of the formation of capitalism in Europe can be traced to operations such as payments delays, and the accumulation of such delays, which promoted merchants' enrichment⁵⁰².

All this resulted in an increase of the total volume of bill operations: in 1786, it reached 100 million livres in France. The discount volume increased from 29 million in 1777 to 483 million livres in 1788 as a result of the discount rate's reduction⁵⁰³. Experienced brokers, also called exchange agents (*agent de banque et de change*, and later *agent de change*), promoted discount operations growth throughout France. They were successors of French money changers, *courratier de change*, and were granted official status in 1684. The Decree of 1705 stipulated for a specific quantity of these agents (115 persons) in France and granted them a monopoly for dealing with state securities⁵⁰⁴.

Although the notion of discounting appeared in Italy towards the end of XIII century, bill discounting originated from Antwerp's financial market in the 1530s. At the end of XVI century, the discount was widely used, when cash money deficits stimulated a systematic and purposeful buying up of securities (including bills) at a discount.

The bill discounting practice was further developed in England in XVII century. Commercial discounting was spread even in the early XVIII century, which is proved by documents from France.

Since XVIII century, modern bank discounting began to be implemented in the other countries of continental Europe. In the early XIX century, bill discounting became one of the most important functions of commercial banks, and the transformation of a bill into a commercial instrument created significant changes in the banking system.

2.9

The Development of Bill Operations in England

UNLIKE THE COUNTRIES of continental Europe, the exchange law in England developed its methods independently from the traditions of the Roman and canon Christian laws.

Even in V century, the territory of England was seized by the Anglo-Saxons, who created the State of Britain and carried over their German laws and customs. In XI century, England was conquered by the Normans, who adopted other legal provisions from France. Since XIII century, the Anglo-Saxon and Norman laws gradually united, and the court decisions eventually became the main source of law. As a result, the history of English law was tightly bound to the organization of court procedure⁵⁰⁵. The Roman law was mainly private, which is why it could not be used by English courts, where public cases were heard.

There is a traditional general theory, according to which the first notes were brought to England by Italians and spread there as a result of the cash import ban. The credit and note operations later developed in the other ways than it did in continental Europe⁵⁰⁶.

Long before the appearance of the Italian-type notes, letters of commitment (*littera obligatores*) were widely used in England. These documents are mentioned even in Acton Burnell's Statute (1283), where it was noted in the last clause that the debt liabilities had to be taken to favor the commercial credit, according to the rules that existed before. Several thousand debt commitments from the end of XIII century were preserved in London's "Books of Records"⁵⁰⁷. These documents were not only limited to trade relations, however, during the development of commerce,

they were mainly used by merchants. If in XIII and XIII centuries they were drawn up in an optional form of debt commitment letters, then in XV century, they become more formal and laconic.

Debt commitments were rarely recorded in registers, because such a record converted a debt letter in a formal debt commitment. In medieval England, all persons who possessed property had personal seals in order to verify the authenticity of private debt documents. Letters of commitment spread because of their improved reliability. Any well-known merchant could issue debt documents, certifying the documents by signing them, sometimes without a seal but with witnesses' signatures.

Below is a sample of a credit document:

«I, George Saly, in compliance with your will, promise to pay you or the person who presented this letter, 6 livres in Flanders coins and certify this by my own signature and with my own blood.

May 25, 1479. Signature»⁵⁰⁸

Such documents were neither sealed nor signed by the witnesses, and were frequently written by the debtor. As a result, they were called "promissory notes with one's own signature"⁵⁰⁹. These documents were frequently passed from one merchant to another without complying with formalities, which harmed the reputation and reliability of debt commitment transfer. There is a well known case of a foreign merchant who issued a promissory note to John Felde for the sale of wool. First the note was passed to Luis Finchman, Felde's confident, who then passed it to Laurence Parke, who passed it to John Petit. John Petit bought on this promissory note goods from Jacob Fleming. Such debt commitment transfer had a wide network, which is proven by the records of XIV and XV centuries, similar to the following one :

«On November 15, 1420, Bartolomeo Contarini, a Venetian merchant, adduced evidence that he had paid his debt in amount of 152 pounds 10 shillings 6 pence to an (English) citizen Steven Foster, a fish trader, which was to be paid by grocers Sayr Acre and Nikolas Whyford, (English) citizens»⁵¹⁰.

However, when the cases related to these documents were judged, it was ruled that transferring capacity was not stipulated by civil law.

In XVI century, the letters of commitment, which were established instruments of commercial credit for centuries, lost their significance. Since the English lawyers taught traditional Roman law and the Code of Justinian, there is no doubt that they sacrificed commercial usability in the name of judicial conformity and blamed merchants for obscure wording in documents to conceal illegal operations. The merchants solved this problem by adopting another document for their purposes—the Italian-type bill of exchange⁵¹¹.

In XVII century, written debt commitments appeared in circulation again. They can be considered prototypes of promissory notes and bank checks. Beneficiaries under such documents could grant the right to transfer money (or a part of money) they were owed to another person, and the letter in which he asked for such a transfer was similar in its format to the antecedent bank cheque, which was drawn up in optional form⁵¹².

In XVI century, when English trade was closely related to Antwerp's money market, goods purchasing was frequently financed through letters of commitment marked "payable to bearer." When the maturity date came, these credit instruments were transferred at Antwerp's stock exchange, and the debts were eliminated through cancellation.

The bill of exchange's function was different: they helped to transfer money safely from Antwerp to London. Thus financial innovations came to London through trade contacts with Antwerp. London's stock exchange at Lombard Street opened in 1571, and was created by using Antwerp's stock exchange as an example⁵¹³.

Bills of exchange were known to English merchants due to their commercial relations with Italy and other European countries prior to the bill of exchange's admission by the civil law. After the Jew usurers were exiled from England at the end of XVIII century, the Italians from Lombard began their credit activity⁵¹⁴. Therefore, the first traditional Italian-type bills of exchange might have been brought to England by them.

Englishmen frequently blame the Italian merchants for exporting gold from England and importing only luxury, therefore causing the English pound's value at international fairs to plummet. Therefore in 1564, the English government authorized a special commission to determine the real rate of the currency of England and Flanders to find out the cause of currency falling at Antwerp fairs. In the commission's report, it was proved that the credit interest was put in the currency rate itself, because the pound sterling in London always quoted higher than in Antwerp. English manufacturing was in great demand in Antwerp and Bergen-op-Zoom

The demand for note for payment at Antwerp fair promoted an increase of the rate of the pound sterling at that fair, which influenced its rate in London⁵¹⁵.

By the early XVI century, English merchants rarely used bills of exchange, because in most cases they brought their merchandise to fairs themselves. The main background of bills of exchange spread in England can be considered the apparition of trade companies that had branch offices abroad⁵¹⁶. A large-scale trade between England, Antwerp, the Netherlands, France and North Germany favored the branch offices apparition.

In England, bills of exchange were called repayment letters. A typical repayment letter is cited below; it proves that the formalization process of these letters:

"To Jess

My fair, blessed and honorable master. To your benefit and joy I confirm receiving by exchange from Tomas Kestevin, Richard Saly's broker (a woollen cloth trader from Calais), 40 pounds sterling that must be paid to the above mentionned

Richard Saly (or to the person who will present this letter) in London on the 24th February of the next year. I ask you to pay properly 10 pounds on the date indicated in compliance with this repayment letter. I confirm that, I, John Dikons, wrote this bill by my own proper hands and stamped it with my master's seal.

The 8th day of December 1472 of our Lord."

There is an endorsement on the bill's overleaf: "To my fair, blessed and honorable master, John Wode, a woolen cloth trader from Calais, in London," after which Wode's trade mark is put⁵¹⁷.

Initially, bills of exchange were used only by foreign merchants who traded with England. Later they were used in domestic trade. Such an evolution was possible due to a number of court hearings at the end of XVII century. English courts opposed passing letters of commitment and permitted transferring bills of exchange. However, in 1699 the endorsement was officially admitted, the improvement of new methods of commercial credit concerned only bills of exchange, and the repeated proposals to permit the remittance of debt commitments were rejected by courts.

The English legislation provided for a free use of accommodation bills (as distinct from the French legislation, which restricted such practice). By the end of XVII century, the bill of exchange in England almost lost its initial function as a means of safe money transfer, and its negotiability was much higher than in continental Europe. Bills became a simple and useful means of commercial credit.

This influenced the legal status of letters of commitments, the promissory note prototype. In the second half of XVII century, merchants' customs regarding these documents were included in the legislation, and the promissory note's remittance was completely admitted⁵¹⁸. No difference between promissory notes and domestic bills of exchange (inland bills) was made in court hearings. In the Resolution adopted by the House of Lords, it was indicated that inland bills of exchange operations were subject to the same laws as operations with debt commitments, i.e. promissory notes⁵¹⁹. This practiced ended in 1709, when royal judge Holt announced that a promissory note differed from a bill of exchange, which is why it cannot be transferred. According to him, promissory notes had been used for over 30 years, and the application led to a new type of credit document apparition invented by goldsmiths from Lombard Street and unknown to common law provisions. Promissory notes were not used by English merchants for only 30 years. They had been used much longer, but in the last decades of XVII century, the number of court hearings with respect to these notes increased⁵²⁰.

London goldsmiths (Engl. goldsmith) gradually transformed into goldsmith-bankers, and they began to control credit operations from the end of XVI century to the early XVII century. English merchants usually deposited their money to the mint situated in the Tower of London, which was the fortress of London. In 1614, King Charles I, having little money, seized gold and coins stored in the Tower in the amount of 120 thousand pounds. Thereafter, London merchants addressed private

goldsmiths who began their banking activity. Thus private banking flourished in the second half of XVII century in England.

Constant shortages of money that both belligerent parties felt during the civil war supported the need for goldsmith-bankers services and credit operations spreading. This was also expanded at the end of XVIII century by commercial relationships between England and Holland (Holland's economic achievements were due to state banks' activity—the Bank of Amsterdam founded in 1609, and other banks in Midlburg, Delft and Rotterdam). After the Bank of Hamburg (1619) and the Sweden bank (1656) were founded, English merchants called on their services progressively in order to borrow credit and note operations techniques⁵²¹.

Due to commercial contacts with Holland, bill discounting practices spread in England at the end of XVI century. For a long time, a common opinion reigned that bill discounting appeared in England no earlier than XVII century. In reality, as was already pointed out in the chapter devoted to discount evolution, it was engendered at Antwerp money fairs in the 1530s. Perhaps goldsmith-bankers used the discounting of inland bills and checks in the early XVII century, however discounting operations which merged deposit operations and money transfer to form one account into another took place in England in XVII century. To a certain degree, the Jews returning in England favored that.

Thanks to their business relations with Italy and Amsterdam, goldsmith-bankers' activity expanded and credit operations developed. At that time, there were more than 100 goldsmith-bankers in London. Gold-working and banking was integrated during XVII century. The most important were six banking companies who separated credit operations from gold-working.

English bankers' financial operations were similar to those of Italian bankers. Toward the end of XVII century, the money system of England had the same faults as money systems of other countries: both English and foreign currencies were in circulation, and merchants were constantly trying to exchange it. Managing considerable funds, they bought bills, different receipts and treasury orders at a discount⁵²². They also used clients' written instructions on money transfer. The acceptance of deposits spread later. Since XVII century, goldsmith-bankers began to pay 6% per annum for money deposited and give a receipt in which a deposited sum was indicated to the depositor. These receipts had no recourse capacity due to the lack of a unified form of documents, which was developed by XVIII century⁵²³.

The goldsmith-bankers' role in the history of credit operations in England should not be exaggerated, because they were a little group among a number of notaries, brokers and other financial intermediaries. Since XV century, English merchants carried out banker's functions, lending credits, as well as buying and selling bills of exchange.

Notaries carried out the same activity. At first they were only intermediaries between clients, but then they began to accept deposits and lend credits. In XVIII century, these notaries, a group of private London bankers whose offices were in West London was created. They became known as the West-End bankers.

English bankers who allotted credits to politicians of XVII century such as Cromwell and King Charles II sometimes attained 20-30% in interest per annum. Private enterprises received credits on the same conditions. Charles II's financial embarrassments (the king owed to goldsmiths more than 1,300,000 pounds) resulted in announcing in the early 1672 that the treasury would stop payments for 12 months. In turn, bankers suspended payments, which led to a general financial crisis. As a matter of fact, it was the state's bankruptcy that disrupted goldsmith-bankers' activity⁵²⁴.

It must be noted that the activity of English goldsmith-bankers was frequently criticized by contemporaries. They were accused of money damaging, exporting sterling coins abroad, and putting extremely high interest on loans collected not only from private persons, but also from the state. Private bankers' activity dissatisfied the public, and unlike like the Medici from Italy and the Fuggers from Germany, they did not found international banker houses. This became the main reason for establishing the public bank in England. The competition between England and Holland for the global financial market favored that as well. Since the Bank of Amsterdam already existed in Holland, it was obvious that a similar bank needed to be established in England.

The Bank of England was established in 1694. Its founders accumulated funds by subscription of 1,200 thousand pounds. These funds were lent to the government, which had to repay 100,000 pounds per annum. In return, the Bank was granted the right to fulfill a number of operations, including note operations, and provide loans on the security of goods and property.

While the Bank of England was established, its founders avoided the mistakes made by Italian and German bankers of XVI century, such as mixing together short-term credits to private persons (lent through buying of merchants notes) and long-term credits offered to the state.

Instead of using its clients' money to provide a long-term loan to the state, the Bank of England used its own funds. However, it was impossible to remove all difficulties because the state's need for long-term credits exceeded the bank's capital⁵²⁵.

Since its founding, the Bank of England differed greatly from Italian banks and from the bank of Amsterdam, because its main activity was accounts managing. In the Bank's Statute, the use of notes or debt letters payable to the bearer were not mentioned. It was noted only in clause 28 that all accounts may have an endorsement⁵²⁶.

Due to the government of England's great need for money, in 1696 treasure bills were issued, which represented improved warranties and had a fixed maturity date. Although the first issue of these notes was not related to the Bank of England, it widely used by them. The aim of issuing treasure bills was to prevent cash shortages, as well as to provide the government with money. At that time, treasure bills were considered a substitute form of paper money, because the Bank of England's success and the reliability of banknotes it issued were not yet apparent⁵²⁷. However, special taxes, on account of which these bills had to be charged (in compliance with the treasury's common practice), were collected in deficiency, which is why the goal of treasure

bill issuing was not achieved. Thus the Bank of England began to discount bills. In October 1694, the Weekly Committee granted the right to permit regular depositors to use sealed warranties instead of inland bills or goldsmiths' warranties as payments. In November, the decision to accept all inland bills and warranties no matter what their amount and how far the distance of the place of issuance was adopted.

In May 1695, new regulations were issued—to accept warranties (notes) and accounts for a term not exceeding three months only from the persons who deposited their money in the Bank of England at the rate of 3% per annum. In July, the court decided that the discount would be offered only for those who would deposit all the money in the Bank (however, a week later this limitation was abolished). In October of the same year, a decision was made to permit any trustworthy person to discount up to three thousand pounds at the annual rate of 4.5%, even if this person did not have an account in the Bank of England⁵²⁸.

The discounting of foreign notes demanded cautions because of the war in Flanders and insecure money transfer. At the end of 1696, the bank's management ordered their agents to accept only those foreign notes whose term did not exceed 50 days; the volume of such discounting was limited to 10 thousand pounds, and only depositors' notes were accepted. However, several days later, the volume of discounting was extended to twenty thousand pounds, and in May 1697, contracts up to 40 thousand pounds were permitted, but only with the depositors.

During the first decade of XVIII century, the Bank of England's policy regarding note discounting was clearly defined. Receipts and treasury order discounting complied with its own rules, though the court could not decide whether to accept foreign notes from the individuals who did not deposit all their cash capital in the bank.

In May 1711, the rules of note accepting were approved. It was supposed that foreign notes would be accepted for a term not exceeding two months, inland notes for a term not exceeding one month, and warranties with endorsements were accepted from "trustworthy individuals" for a term not exceeding one month. All these liability documents were discounted at the rate of 6% for those who deposited their money in the Bank of England. Notes and other documents had to be presented in the bank by the depositor in person, or through "known representatives." Those notes issued for paying other documents of the same client were not discounted at all.

The discounting business developed slowly. Thus in June 1695, only one or two discounting operations were effectuated during several days. In the following years, the volume of discounting rose slightly, but did not exceed 20 operations per day. In 1697, when the war in Flanders terminated and peace was concluded, the use of the discount grew. On April 28, 1698, 59 notes were accepted. During the entire year, such activity continued⁵²⁹.

In the middle of XVIII century, the volume of notes discounting was insignificant. Thus from August 4 to December 15, 1750, the maximum discount amount during a day was 19,212 pounds; more often, it did not exceed 1,000 pounds. The minimum volume of daily discounting was 360 pounds. In the beginning of 1760s, after the Seven

Years' War was over, commercial activities became active. From March to September 1762, the daily discounting volume only was constantly over ten thousand pounds; at least one day per week, operations were effectuated at an amount exceeding sixty thousand pounds.

In connection with the international financial crisis of 1763, the Bank of England forced into application a free discount. Although during the two following years this activity reduced, the discounting business developed actively as a whole⁵³⁰.

The second half of XVIII century was marked by several crises (1773, 1783, 1793), which negatively influenced private bankers' activity. During the crises of 1783 and 1793, private bankers addressed the Bank of England requesting assistance, but they did not receive the help they needed because the bank's capacity was restricted.

In 1793, the war with France began, which created a flurry among the depositors. Their claims to return their money deposited led to the bankruptcy of several private banks. The situation normalized only after the government took the decision to issue treasure bills totaling five million pounds by banknotes of 100, 50 and 20 pounds. In 1797, a new crisis began, and provincial banks again got into difficulties. Thereafter, the government decided to release the Bank of England from its obligation to change its banknotes on gold, and on February 27, 1797, the Bank of England suspended the exchange. Thus the epoch of paper money circulation began⁵³¹.

At the end of XVIII century, the Bank of England limited the volume of discounting to minimize the risk of currency exporting. In fact, such policy could be successful because of national price level regulating. It also permitted the bank to influence the currency rate balance, but there is no reliable proof that the latter was the main goal of the policy⁵³². The Bank of England began to make payments in London emitting its own promissory notes. The notes emission volume changed in different years, rising in 1720 and 1760. In 1785, the note circulation of the Bank of England was equal to approximately six million pounds, and these notes were covered by the bank's gold and silver⁵³³.

Credits to private persons were almost always offered by way of notes discounting. To preserve discounting benefits, a private person or a company had to present a letter of recommendation from the Bank of England's director. In 1797, the Bank did not discount private bankers' notes at all, but on January 1, 1800, it received 396 thousand pounds from discounted bankers' notes. The number of bank's clients who discounted reached 1340 people in 1800, the number of such clients remained between 1200 to 1400 persons until 1815⁵³⁴.

In the second half of XVIII century, a new businessman-type dealing with credit operations appeared on the financial market of England along with the Bank of England and London bankers (old goldsmiths' successors). At first, these bill-brokers were only the intermediaries between merchants who were in need of credit and individuals seeking to loan their money at a profit⁵³⁵.

London was a leading center of trade, both foreign and domestic, and was the perfect place to implement these innovations. Most payments between provincial towns and tax transfer from provincial payers passed through it. The emission of securities of military departments, such as marine fleet notes and artillery bonds grew, which let private bankers gain a considerable profit on buying these securities at a discount and selling them later at face value. London's private bankers issued their own bills, but the Bank of England's notes were more credible than the bills of any private banker⁵³⁶. In XVIII century, a number of loans were granted by merchants and entrepreneurs directly, without the intermediation of London's private bankers. Private banks allotted credits to industrialists and business men by discounting bills above all competitors. Discount rates reached 5% for inland notes (the Bank of England's rate was the same) and 4% for foreign trade notes, which were considered more credible. The rate later reached 5% for these bills as well⁵³⁷.

Bill-brokers may be considered private bankers working with comparatively minute start-up capital and taking deposits from more major bankers to discount bills. Bills obtained in this way were used as a pledge for new credits. In the early XIX century, bill-brokers represented small provincial banks. Thanks to them, these banks, unable to successfully loan the money that they received from selling agricultural products and land lease, exchanged their funds. London's bill market directed bills incoming from industrial districts to bankers of agricultural regions in the East and South-East of England. Being experienced professionals, bill-brokers estimated bills' quality in a proper manner, which provincial bankers could not do. A bill-broker's success and profits were directly related to whether his recommendations were qualified⁵³⁸. Later, private companies (discount companies) started discounting bills with considerable capital. They lent money from banks on the backing of bills and other securities, and held their own discount operations.

After major joint-stock banks appeared in London, and free capital began to be accumulated, bill-brokers' functions changed. From credit intermediaries between different counties, they became intermediaries between London bankers. Thus bill-brokers began to specialize on separate types of bills (for example, bills of trade with colonies, or bills of companies who traded cotton). In this way, bill-brokers began to guarantee on a pro forma basis the quality of bills, marking them with endorsements and being vendors of bills themselves.

Only one step had to be made for bill-brokers and discount companies to begin buying bills not only judicially, but practically. Private banks sought to find out where to put up their capital profitably: they had to pay interest to their clients, and depositing capital in the Bank of England did not render a profit. As a result, banks loaned their capital to bill-brokers and discount companies, who began buying bills. Lending such capital to bill-brokers as a short-term credit with the right to refund money in three, seven or fourteen days, turned out to be profitable.

Thus bill-brokers became real bankers, and discount companies became private banks. Perhaps the only main difference was that discount companies and bill-brokers

constantly bought and resold bills, whereas London banks did not discount bills (later provincial banks followed suit). To blossom, bill-brokers had to find out not only the best markets for their clients, but also the cheapest credits. To do so, bill-brokers provided for an absolute guarantee of credit surety not only by bills and other securities pledging (as well as their reputation), but also by the fact that they took credits on terms to return them at any time on the bank's request.

For example, on November 11, 1857, the London and Westminster Bank discounted bill-brokers liabilities in the amount of 5,623 thousand pounds, from which 2,800 thousand pounds were to be paid by December 4, and 2,000 thousand pounds by December 31. The Bank aimed to strengthen its position, which is why it rejected discounting the other bills instead of bills whose maturity date already came, and bill-brokers had to refund these sums in a different way.

During the crisis of 1857, the Bank of England allotted a credit to bill-brokers in the amount exceeding nine million pounds. The Bank tried to force bill-brokers to take great sums of money in credit. The Bank reserved the right to allot credits to them only at a given time, but these attempts failed⁵³⁹.

In XIX century, the revision and codification of a number different promissory note/bill resolutions adopted in England since the early XVII century was of current interest. It was necessary to eliminate discrepancies between English and Scottish exchange laws (the Scottish bill exchange law included different resolutions on promissory notes since 1681). The first attempt of such codification was effectuated in 1862, but failed. Only twenty years later, a new project was elaborated. It included the provisions of English, Irish and Scottish laws on promissory notes and bills of exchange.

On August 18, 1882, the Note Code, which consisted of 100 articles, was adopted⁵⁴⁰. It united some special features of French and German exchange legislation, and reflected the peculiarities of English exchange law having described a specific English type of promissory note as close to a check, which could be issued as payable to a bearer. Promissory note liabilities could be charged with interests, and a qualified acceptance to make a protest against a promissory note was not necessary⁵⁴¹.

At the end of XIX century and in the early XX century, an international Anglo-American law based on the English exchange law appeared. In the countries that joined it (India, colonies of England, and several states of the USA since 1897), promissory notes were attributed to negotiable instruments (in England checks are considered negotiable documents). In the United States, the United Commercial Code attributes promissory notes and bills of exchange to negotiable instruments. The securities of a special type are negotiable documents as well, but in the countries of continental Europe, they are usually regarded as equities (certificates, bonds and other documents quoted at stock exchanges). During XX century, the Anglo-American system of exchange law further developed.

2.10

The Harmonization of the Exchange Law

EXCHANGE LAW FIRST appeared as an international law, which is why agglomerative tendencies of exchange laws of different countries under the international private law was an obligatory course of development.⁵⁴²

In the middle of XIX century, even O. M. Osipov underlined the urgency of exchange law harmonization: "Trade is determined by one state frontier or another. The promissory note, its first and main servant, should not be limited in any way, and should be a cosmopolitan instrument⁵⁴³."

A. Dolinsky also pointed out the necessity of exchange law harmonization: "Deprived of ethnic flags and devoid of ethnic religious beliefs, the provisions of exchange law differed seldom in statutes, but were finally united and brought about three systems of exchange law. The need for international exchange in worldwide clearing aimed for and resulted in exchange law harmonization⁵⁴³."

In 1848, the united all-German promissory note statute was adopted, in which the development background of German exchange law was generalized. German exchange law gradually superseded the French exchange law tradition. As a result, based on a sample of the German statute, in 1851 the exchange law was adopted in Sweden, in 1858—in Finland, and in 1860—in Serbia.

Although in the second half of XIX century, European exchange law was not only codified to a great extent (being part of trade codes or separate exchange laws), but also partially harmonized (as compared with 60 promissory note statutes effective in the first half of XIX century only in Germany). Three main directions may be traced out from it: the French exchange law based on the correspondent provisions of 1807

Code de Commerce (articles 110-189), the all-German promissory note statute of 1848 and the English *Bills of Exchange Act* of 1882.

The work on exchange law harmonization began in the middle of XIX century. The subject (i.e. consolidating exchange laws) was started in 1863 at the international meeting in Ghent, but since the parties' viewpoints contradicted each other and were inharmonious, the principles of such consolidation were not formulated. The parties did not come to an agreement seeking to draw out alternative projects based on their own national legislation.

In 1869, a new rendition of the all-German trade statute was adopted, in which the entire experience of exchange law of the time was taken into account. The exchange laws of Belgium (1878), Denmark, Norway, Sweden (Scandinavian statute of 1880) and Italy (1882) were all based on this statute. Thus in the 1870s-1880s, the German exchange law system was almost completely formulated and became the main background for exchange law harmonization, in which German entrepreneurs were of interest.

In the 1870s, the English Association for Reform and Codification of International Law at meetings in the Hague, Antwerp and Frankfurt elaborated 27 provisions of projected exchange law harmonization called "Bremen rules" (adopted in 1875). This was significantly influenced by the German exchange law. At the same time, similar work was being done by the German Institute of International Law. It was based on the international promissory note agreement draft proposed in 1878 by the Berlin merchant court. In 1882-1885, in the course of meetings in Turin, Munich and Brussels, a draft of an all-European promissory note statute was drawn. The real association of exchange law systems did not take place because the French and German parties sought to argue advantages of their own exchange law systems.

In 1882, another system was legally documented—the Anglo-American system based on the English promissory note statute adopted on August 18, 1882. The statute regulated legal relations related to promissory notes and bills of exchange circulation. Since 1887, this law has been valid in the USA and in former colonies of England (India, etc.). However, the majority of countries of continental Europe used the German exchange law system.

In 1884, Belgium's government addressed business men of different states and scientific societies, proposing to send their representatives to the congress on trade legislation in Antwerp in 1885. At this congress, a draft of an international promissory note statute was adopted. This draft was further discussed in 1888 at the promissory note congress in Brussels, where the statute's preliminary version was amended by some provisions of German exchange law.

In 1885, the Institute of International Law took a favorable view of unified exchange laws elaborated by the Italian lawyer Cesare Norze. However, it was not this project, but the next one by German lawyer Felix Mayer, which was used as a basis for two conferences held in Hague (the first one took place in 1910, the second one in 1912). Thus the international harmonization of legislation on promissory note/bill

circulation approved a predominance of German exchange law, though in 1904, V. D. Katkov assumed that international law would be harmonized on the basis of the English law system⁵⁴⁴.

The first international conference in Hague (June 10-23, 1910) to elaborate the united promissory note legislation, became the next step in exchange law harmonization. It was called by Germany, Italy and the Netherlands. Thirty five states, including Russia (represented by K. Shaider, a secret council) participated in it. After the draft of the international promissory note law was drawn, it was passed for review to the countries who participated in the conference to convoke a new conference in two years to perfect and approve it.

The second conference in Hague took place from June 10 to June 23, 1912 in the castle Binnenhof. Thirty seven states participated in the conference, and Russia was represented by the baron A. M. Nolken, a secret council. Taking into account remarks to the draft from the resolutions of the Hague conference of 1910, the second conference aimed to harmonize international exchange law and have all countries involved approve it. The legislation was signed by nineteen of thirty seven representatives of countries (two countries refused to sign it, nine were not unauthorized to do so). Russia signed only a part of the convention's provisions related to bills of exchange⁵⁴⁵.

However, the conference's work did not attain the desired results due to the discrepancies between states' representatives. Some of them held to Romano-German traditions, and others to Anglo-American ones⁵⁴⁶. The beginning of World War I slowed the process of exchange law harmonization.

The provisions of the legislation signed at the Hague conference were used in national exchange laws of several countries, particularly in two French exchange laws: on bills of exchange (1922) and promissory notes (1924), and in a new Polish law on promissory notes elaborated on the basis of the promissory note statute adopted in Hague in 1912. In the beginning of the 1920s, the provisions adopted at the Hague conference lost their importance. Some countries of Latin America that had once used to the convention's provisions refused to use them and ratified the Bustamante Code adopted by the Pan-American Congress in Havana in 1928. As far as Russia is concerned, it did not use the Hague conference's provisions, and the USSR denounced them.

After World War I, the harmonization of exchange law became a top priority again. The League of Nations was actively engaged in this issue. Most countries supported the League in its desire to continue the work, which authorized the League to address well-known lawyers of that time, such as D. M. Chalmers, M. M. Jitta, M. M. Lyon-Caen. The latter took part in the drawing up of text of the Hague Convention of 1912.

A new step to exchange law harmonization was made at the Geneva International Conference. After this conference, on June 7, 1930, three international laws were signed: № 358 "established the Unified law on bills of exchange and promissory notes" (with two annexes); № 359 "regulated some conflicts of laws on bills of exchange

and promissory notes;" № 360 "related to bills of exchange and promissory notes on stamp duty."

Convention № 358 included 2 annexes: the text of Unified law of negotiable instruments (ULNI), as well as the list of those exclusions from ULNI provisions that every country-participant of the Geneva Convention could make in its national exchange law. Similar to the Hague convention and General statute on promissory notes, the documents of the Geneva Convention were mainly based on German exchange law provisions and partially on French ones, which determined the list of countries that joined the Geneva convention.

The Geneva Convention was signed by twenty five countries : Austria, Belgium, Hungary, Germany, Greece, Denmark, Spain, Italy, Colombia, Luxembourg, the Netherlands, Norway, Peru, Poland, Portugal, Turkey, Finland, France, Czechoslovakia, Switzerland, Sweden, Ecuador, Yugoslavia, Japan and the free city of Danzig. However, only fourteen countries ratified it: Austria, Belgium, Greece, Italy, Finland, Switzerland, Sweden, Japan (on August 31, 1931), Denmark (on June 27, 1932), the Netherlands (on June 20, 1932), Norway (on June 27, 1932), Germany (on October 3, 1933), Portugal (on June 8, 1934), Luxembourg (on March 5, 1963). Six countries later joined the Geneva Convention, including the USSR (on November, 25, 1936).

The Geneva Convention's documents were independent and separate, which is why not all the countries-participants could sign all of them. Thus Australia ratified only convention № 359; Austria, Bahamas, Belgium, Brazil, Hungary, Denmark, Germany, Greece, Ireland, Italy, Cyprus, Luxembourg, Malaysia, Malta, Monaco, the Netherlands, Norway, the United Kingdom, Papua New Guinea, Poland, Portugal, the ex-USSR, Tonga, Uganda, Fiji, Finland, France, Sweden, Switzerland, and Japan ratified only convention № 360⁵⁴⁷.

Thus the majority of states compiled their national exchange laws with the Unified Law of Negotiable Instruments. These states are part of the Geneva Exchange Law System.

Here are the participants of Geneva Exchange Law System :

1. *Countries-participants of Geneva conventions on negotiable instruments 1930:*
Austria, Belgium, Brazil, Hungary, Greece, Denmark, Italy, Luxembourg, Monaco, the Netherlands, Norway, Poland, Portugal, the USSR, Finland, France, Federal Republic of Germany, Switzerland, Sweden, and Japan
2. *Countries that are not participants of the Geneva Conventions 1930 policies on negotiable instruments, but whose the exchange law is based on ULNI:* Algeria, Argentine, Afghanistan, Bulgaria, Benin, Burkina-Faso, Burundi, Vatican, Gabon, Gaiti, Guinea, Zaire, Indonesia, Jordan, Iraq, Iceland, Cambodia, Kameroon, Congo, Costa Rica, Cote d'Ivoire, Kuwait, Laos, Lebanon, Mauritania, Madagascar, Mali, Morocco, Niger, the Netherlands Antilles, Paraguay, Peru, Ruanda, Romania, Saudi Arabia, Senegal, Syria, Slovakia,

Surinam, Togo, Tunis, Turkey, the Central African Republic, Czech Republic, Ethiopia, Yugoslavia, and South Korea.

3. *Countries-participants of Anglo-American exchange law system*: Australia, Antigua, Bahamas, Bermuda, Burma, Botswana, Great Britain, Virgin Islands, Ghana, Guyana, Hong Kong, Grenada, Zimbabwe, Israel, India, Ireland, Yemen, Canada, Kenya, Cyprus, Lesotho, Malawi, Malaysia, Namibia, Nigeria, New Zealand, Pakistan, Puerto Rico, Swaziland, St. Lucia, Sudan, the United States of America, Sierra Leone, Tanzania, Trinidad and Tobago, Uganda, Fiji, Philippines, Sri Lanka, the Republic of South Africa, Jamaica.

Countries that joined neither Geneva, nor Anglo-American exchange law systems: Bolivia, Venezuela, Guatemala, Honduras, Dominican Republic, Egypt, Iran, Spain, Colombia, Cuba, Liechtenstein, Mexico, Nicaragua, Panama, El Salvador, San Marino, Thailand, Taiwan, Uruguay, Chile⁵⁴⁸.

The United Kingdom and the United States did not join the Geneva Convention, whose exchange laws were based on the English Law on Bills of Exchange of 1882. On the most American, territories the United Trade Code adopted in 1968 is valid. Its trade documents regulate credit documents in circulation, particularly promissory notes.

These states, as well as others, elaborated their own exchange laws in compliance with the *Bills of Exchange Act* of 1882 and relate to the Anglo-American exchange law system. The majority of Latin America's countries, Egypt, Iran, Spain, Liechtenstein, Taiwan and Thailand borrowed the provisions of the old French exchange law stipulated in *Ordonnance de Commerce*, written in 1673. In the international notes circulation, there are two types of notes: a Geneva Convention 1930-type note and an Anglo-American-type note. Since in the countries of Anglo-American exchange law, note circulation is common, the refusal of the United Kingdom and the United States to join the Geneva Convention abated to a certain degree the importance of the Geneva Convention, and exchange law harmonization remained incomplete.

It is natural that the existence of two international exchange law systems slowed payments development. Hence, in 1950, the International Institute for Unification of Private Law in Rome started to work on the creation of a united legislation applicable to negotiable securities. In 1968, the UN Commission on International Trade Law (UNCITRAL) was engaged in this work. The Commission was established in 1966 by the decision of the United Nations General Assembly as an instrument by which the UN could play a more active role in reducing (or removing) these obstacles to trade.

Since 1972, the work on international exchange law using both the experience of the Geneva and Anglo-American systems began. Soon the first draft of the new law was prepared. In 1988, UNCITRAL started the UN Laws on International Bills of Exchange and International Promissory Notes (43/165). To find a mutually acceptable solution in preparing this legislation, the experience of both systems was used. Initially,

two versions were considered, the first of which mainly referred to the Geneva Convention's legal provisions. Since the countries who adopted Anglo-American exchange law did not accept this perspective, the first variant was rejected⁵⁴⁹. As far as the second variant is concerned, it suggested writing new texts of laws, which was the final course of action (with limitations for international promissory notes). However, this limitation reduced the extent of the new convention application, making it dependable on the consent of the parties.

At first, it was planned that the convention had to contain in its name the words *International Bill of Exchange (UNCITRAL Convention)* or *International Promissory Notes (UNCITRAL Convention)*⁵⁵⁰, but some states kept a lower profile regarding this new convention. In reality, taking into consideration the reduced significance of the traditional promissory note, the further steps on exchange law harmonization could positively influence the co-existence of two exchange law systems.

In the UNCITRAL Convention, an attempt to preserve positive achievements of both systems, excluding their imperfections, was made. It was assumed that a compromise would be made providing for the extension of a promissory note's functions as an instrument of payment and crediting, as well as removing the risk of falsification with regard to a promissory note's owner.

During the preparation of UNCITRAL Convention's text, the matters related to a promissory note's owner were actively discussed, as well as the matters of right and obligations of the parties under promissory notes agreements, the volume of right and obligations of a drawee paying a false endorsement, and the punishments for persons who counterfeit the endorsement. The discussion of these matters resulted from the fact that the Geneva and Anglo-American exchange law systems had opposite attitudes toward these matters.

The UNCITRAL Convention provided for the implementation of new international payment instruments, and a body of laws for regulating relationships resulted from their use. The necessity for such regulations resulted from the disparities in national legislations, which created lack of legal clarity with reference to instruments of payment used in international transactions. It was believed that this convention's provisions would be effective in case a special form of the security obligatory marked with a note that the document is drawn up in compliance with UNCITRAL Convention's provisions⁵⁵¹.

Despite the fact that Convention's draft was approved at the 43rd session of UN General Assembly on December 9, 1989, only three nations signed it : the United States, Canada and the USSR. None of them ratified it. Today, the UNCITRAL Convention is not valid.

PART 3

THE HISTORY OF WEKSEL OPERATIONS
IN EASTERN EUROPE (RUSSIA, UKRAINE, POLAND)

3.1

Kievan Rus and Novgorod. Socio-Economic Background of the Development of Credit and Settlement Operations

THE NASCENCE OF *weksel* (akin to the bill of exchange and promissory note) circulation in a part of the world is intimately connected with the development of trade, exchange relations and credit operations. In order to comprehend the specifics of nascence and expansion of credit operations in Ancient Russia between VIII century and XII century AD, as well as in Southern and Northern Russia⁵⁵² between XIII century and XVI century AD, it is necessary to study the evolution of commodity-money turnover in these territories.

The trade began to develop in the territory of Ancient Russia between VI and VII century AD when the Eastern Slaves began to sell the grain to the Byzantine Empire. Another important trade partner was the Arab East. According to G. V. Vernadsky, at the formation stage of Ancient Russia's economy, it was the Byzantine Empire and the Arab Caliphate, an Islamic super power in which the traditions of the Hellenic science and culture were reviving, that it tended to rather than Western Europe. Ancient Russia's economy was merchant and open, the policy of export ensuring the capitals inflow prevailed. The overall volume of international sales in

Ancient Russia was greater than in Western Europe, where the natural economy⁵⁵³ dominated at that time.

After the Poles shut off trade roads to the Azov and Caspian seas at the end of XI century, almost all trade relations with the Arabic countries were broken. The Byzantine Empire became the major commercial partner of Russia. However, the Crusades of 1096–1099 drastically lowered trade volumes with the Byzantine Empire. In 1204, after the capture of Constantinople by the crusaders, the trade relationships between Russia and the Byzantine Empire almost collapsed. The loss of the Byzantine market resulted in the decline of Kiev's and the Southern Russia's economic influence, and produced a rise of the cities of Northern Russia, Novgorod and Pskov, who traded with German cities.

The commerce demanded for a developed money system. However, the lack of its own money⁵⁵⁴ as well as the lack of its own silver sources, hindered the development of exchange relationships and gave rise to the search for alternative methods to resolve money circulation problems.

At first, marten, sable and squirrel skins were the common equivalent of value (hence the name of currency unit «kuna» derives from) (*a marten, kunitsa–Rus.*). As far as the use of skins, they were later replaced by small pieces of skin with or without fur, sealed from time to time. The base of money circulation was the kuna system; the biggest monetary unit, gryvna of kunas, consisted of 50 kunas⁵⁵⁵.

According to Arab travelers, such as Abu Hamid, who traveled from Bulgar to Peremyshl between 1150 and 1153, and Nadzhib Gamadani, in Russia pieces of fur sealed with a special lead seal were used, which can be considered as a peculiar archetype of leather notes⁵⁵⁶.

The general inspiration of Byzantium on Russia resulted in borrowing of Byzantium law fundamentals and organization principles of credit operations (in particular, the state's endeavor to preserve the monopoly in these fields, especially to regulate interests allowed). In Ancient Russia, a credit trade was of great utility—a practice to give money in *gostba* to be further used in commodity circulation⁵⁵⁷. As a rule, in the course of carrying out credit operations, a witness called *posluch* was required. However, if a merchant participated in a credit operation, there was no need for witnesses. If the merchant lost his goods by reasons beyond his control, one could not force him to repay his debt immediately. He had the right to repay gradually. If his guilt for the good loss was confirmed, the creditor had the right to wait for the debt's repayment, or sell the debtor's property and turn him into *zakupa* (a person in *zakup* was in personal dependence of the creditor).

However, the ancient Russian and foreign merchants did not use credit operations among themselves due to the lack of confidence necessary for these kinds

of operations. This lack of trust can be seen in an agreement between Prince Oleg and Byzantine merchants, where the Russian merchants' stay in Constantinople is scheduled in detail.

It was under Yaroslav the Wise that the institution of loan agreements had appeared. At first, they were oral agreements. However, in the *Pskov Charter*, there were formal and informal written agreements, tabulas and records. A loan without a record was permitted only if its amount did not exceed one ruble⁵⁵⁸.

Along with the trade development, usury expanded as well, especially in Kiev and other big cities where the Germans, Jews and Armenians conducted credit operations and had their own separate commercial quarters. Monuments of ancient Russian ecclesiastical writings witness that the Church did not attempt to completely prohibit interest crediting, but recommended the use of *rost po sile*, meaning to give reasonable interests.

The attempts to regularize the usury and interest crediting are reflected in Yaroslav the Wise's *Russkaya Pravda* (1016), which permitted merchants to receive a commission great enough for money used. This was called *rez* derived from *prirezat*, meaning to put a knife, a memento of times when fur represented money⁵⁵⁹. According to *Russkaya Pravda*, the annual interest was 50%. Vladimir Monomakh later brought it down to 40% ; after his reign was over, the interest rose to 60% and even up to 80% in several cases⁵⁶⁰.

According to chronicles, in XII century, princes of Kiev became financially dependant on their creditors. Military expenditures of Svyatopolk Izyaslavovich, Prince of Kiev from 1093–1113, forced him to borrow money from usurers (Princes carried out a policy of their empowerment. During his reign, Jewish usurers acquired a significant influence⁵⁶¹), and impose new taxes to reimburse the treasury. The salt tax was a pretext of the 1113 rebellion in Kiev that began after Svyatopolk's death⁵⁶². Vladimir Monomakh was elected as Prince. He put restrictions on usurious interest rates. The Statute of Vladimir Monomakh was placed at the Prince's Concillium in Berestovoy near Kiev, which became a part of *Russkaya Pravda*, also called *Prostrannaya Russkaya Pravda*, an outstanding monument of the ancient Russian legal literature, which is known to us from several sources. *Prostrannaya Russkaya Pravda* generalized experience of the ancient Russian law, which governed all Duchies of Ancient Russia⁵⁶³.

Below is the content of the Statute of Vladimir Monomakh's articles defining credit operations.

Art. 48. « . . . *ustavili do tretiego raza, ozhe emlet v tret kuny; azhe kto vozmet dva reza, to emu isto ; paki li vozmet tri rezy, to ista emu ne vzyata*».

Translation of art. 48. « . . . adopted to withdraw interests only from the third payment, if a lender takes one third of the sum. If someone takes two thirds of rez

from his debtor, he may recover the principal amount of the debt. Whoever takes three rezes must not demand the return of the principal amount of the debt.»

The expression «to take interests to the third rez,» according to V. O. Kluchevsky's opinion, shall be interpreted as «the third for the two,» i.e. 50%. Therefore, if a usurer lent 10 gryvnas, one «third» rez was equal to 5 gryvnas. If he took 2 rezes, i.e. 10 gryvnas, from his debtors, the creditor had the right to recover the principal amount of debt. If he took «three rezes,» i.e. five gryvnas three times, the usurer lost his right to recover the debt's principal amount.

Art. 49. «Azhe kto emlet po 10 kun ot leta na grivnu, to togo ne otmetati».

Translation of art. 49. «If someone (the usurer) takes (from the debtor) 10 kunas per year for one gryvna lent, this is not prohibited»⁵⁶⁴.

Providing that one gryvna consisted of 50 kunas, the resulting annual interest rate was 20%. These articles of the Statute of Vladimir Monomakh abated art. 46 of *Russkaya Pravda*, which stipulated that a debtor had become fully dependent upon the creditor, which can be considered a precursor to kabal serf of XV century and XVI century. However, the term serfdom is absent from *Russkaya Pravda's* text.

The Statute defined methods of debt collection from a merchant. In particular, the severity of penalties could be mitigated if the merchant had suffered from acts of God or robbery. The debt had to be collected immediately in case the merchant spoiled someone else's goods (art. 50). Regarding merchants who had heavy debts and borrowed money from different persons, it was supposed that they had to return money borrowed from princes, and then the money of merchants from other cities and countries (art. 51). The Statute of Vladimir Monomakh shows evidence of attempts to regularize usury for the benefit of merchants who suffered from heavy interest, even if they had suffered from natural disasters.

According to I. M. Kulisher, it is difficult to accept V. O. Kluchevsky's opinion, who attempted to prove that a concept of capitals was described in *Russkaya Pravda*, since the identification of property, which does not make a profit, is an obvious modernization. In effect, it was not as much the development of commodity-money turnover as the poverty of ancient Russian merchants that trade credit of *Russkaya Pravda* times resulted from. When a foreign merchant sold his goods on credit to local merchants, or lent them money for purchasing goods showed that local merchants frequently did not have enough floating assets. The immaturity of credit operations is substantiated by non-monetary crediting with agricultural products prevailing, which is typical for elder and more simple forms of credit operations⁵⁶⁵.

After the economic influence of Kiev decreased, Novgorod and Pskov, the republics that traded intensively with German cities, Denmark and France, became the heart of ancient Russian commerce. Novgorod provides the most recent evidence,

proving that the ancient Russian credit documents, or doshechki, existed at that time. The chronicles of Novgorod state that during a revolt, the Novgorodians gutted the house of posadnik Dmitriy Miroshkinich and found a number of tabula on which liabilities of those who had borrowed the money from posadnik were recorded⁵⁶⁶. Soon after, Svyatoslav Vsevolodovich became Knyaz (Prince) of Novgorod, and appointed a new posadnik, Tverdislav Mikhalkovich, who delivered the tabula seized in the house of Dmitriy Miroshkinich to Knyaz⁵⁶⁷.

A story of Tshil, Novgorod posadnik, who lent money for trade operations at low interest, is known. Using Tshil as an example, N. A. Rozhkov wrote about boyars' banking activity⁵⁶⁸.

The fact that debt documents were written on wood tabula is an example of the local specificity of liability recording. «Doski» as a means of debt recording are mentioned in the *Pskov Charter* (1467), an important source of civil law of medieval Pskov.

In Northern Russia, wooden tabula were used for notes due to the deficit of other materials for writing. The tradition to use tabula and wooden bars with notes had been preserved in the North of Russia until XIX century⁵⁶⁹. Wooden tabula, which were probably waxed, were written on with a sharp, pointed tool, similar to birch bark letters of Novgorod (among the birch bark letters, the bill of sale of Antoniy Rimlyanin and the lodgement act of Varlaam Khutinskiy are known). The fact that those tabula were widely used in Ancient Russia is proved by the fact that chronicles mentioned them as a form of written documents⁵⁷⁰. «Doski» were considered as acts from which a debt dependence of merchants and other commercial people could arise⁵⁷¹.

The similar «doski» were widely used in Novgorod (the isolated fragments of tabula with notes were found during archeological excavations). The longest period in which they were used was in Pskov, where between XIV and XV centuries, they were the main form of credit documents. According to M. N. Tihomirov's opinion, a certain similarity with subsequent weksels existed.⁵⁷² M. V. Dovnar-Zapolsky referred to art. 14 of the *Pskov Charter*, and noted that special debt records similar to the bill were mentioned in these documents, apart from tabula⁵⁷³.

The evidence of the development of credit operations in Novgorod in XII century and in the early XIII century, as well as a source of information about a medium-sized trading house is the «duhovnaya» of Klimyata, a Novgorod landlord and merchant. Klimyata was a beekeeper; he granted loans at interest, and took credits for himself (20 hryvnyas in silver from St. George's monastery). In the document fourteen merchants who incurred debts at interest from Klimyata were mentioned. The total amount of money he granted was thirty five gryvnyas in silver⁵⁷⁴.

Taking into consideration the level of trade development in Novgorod, as well as the existence of trust merchant societies, it is possible to assume that the use of «tabula» with debt records was a wide-spread practice at that time.

In XIII century, the most ancient Russian cities, including Kiev, Chernigov, Suzdal and Vladimir were destroyed by the Mongol-Tatars. Novgorod and Pskov, as well as Smolensk and Galich, escaped destruction, and were less influenced by the Tatars in XV century. Therefore, these cities acquired great trade and economic significance. These trading Northern Russian republics preserved ancient Russian principles of self-government, and may be considered the preserved examples of ancient Russia's trade economy based on the principles of law stipulated in *Russkaya Pravda* and the *Pskov Charter*⁵⁷⁵. It was only in XVI century that the latter republics obeyed Muscovy (Moscow Principality), which inherited other principles of society and economic organization.

In XIII century in Novgorod, the number of merchants doubled. From that point forward, it was them, not the boyars, who effected and controlled trading operations in most cases. However, according to V. A. Ushintsev's opinion, the merchantry did not constitute a separate social element in ancient Russia, unlike the West European countries (which, in its turn, promoted extending the methods of trade and credit activity)⁵⁷⁶. N. A. Rozhkov stuck to another point of view, stating that the separate merchant class was entirely formed in Novgorod and Pskov, which was proven by the first corporate merchant associations emerging there⁵⁷⁷.

From XII century to XV century, Velikiy Novgorod had been the major trade center in Northern Russia oriented to North European countries and to the cities of the Hanseatic League. Velikiy Novgorod influenced the Eastern territories up to the Urals. Novgorod merchants tended to spread their trade operations to the Volga river to have a route to the Orient through the Caspian sea. The barter dominated in the trade between Novgorod and Pskov with German cities. It is known that in Novgorod, certain restrictions were imposed on commercial activity of Hanseatic merchants who had free scope to act in England, Norway and Flanders.

In the early XV century, German merchants made a complaint that it was prohibited for them to sell their goods in the streets of Novgorod. Because there were neither sea ports (Novgorodians could transfer merchandise by the Volkhov river only) nor brokers in Novgorod, no notaries were present there. It is necessary to be sensible of the fact that unlike the Englishmen and the Flemish (the merchants of these countries had barely left their countries), the Novgorodians traded actively with other countries, which is why monopolies of foreign merchants did not exist there.

Therefore, the activity of Hanseatic merchants was never as extensive in Novgorod and Pskov that it was, for example, in England. In addition, the influence of Princes and boyars was not strong enough to promote the expansion of foreign merchants' influence. The power of Knyaz (Prince) was limited by *veche*. He did not have the power to trade directly with Hanseatic cities because he was forced to address to Novgorodian merchants.

However, the trade volume of Hanseatic merchants with Novgorod and Pskov, according to N. Aristov's opinion, was still large⁵⁷⁸.

Trade contacts between Novgorod and Hanseatic merchants were extended, and the statute of German merchants community in Novgorod (the rules called skra, or shra, were approved by German merchants in Novgorod at their meetings⁵⁷⁹) proves an evident nonconfidence between the parties. It was prohibited for German merchants to enter trade societies with Novgorod merchants, take their merchandise on sale, take money on credit and transport their assets. Thus trade associations of Novgorodian and German merchants were extremely rare, and it was exceptional that the Russian merchants' merchandise was taken on sale by German merchants.

Regarding credit relations of Novgorod and the Hanseatic merchants, the direct attempts to limit the trade with Novgorod merchants for money trace back in the fifth and the sixth skra—only bartering was permitted. The second skra (art. 28) reflects anti-credit operations campaigns between German and Russian merchants, which prohibited to German merchants to take money on credit from Russian merchants under the penalty of a 10-mark fine. The reason was that a German merchant, who could not return his debt to a Russian merchant, fell into the debt kabala⁵⁸⁰. If a German merchant was a creditor, it was very difficult for him to retrieve his money.

N. Aristov believed that the main reason of credit trade interdiction was the non-return of debts or attempts by both parties to sell poor goods. The history of trade relations of Novgorodians with the Hanse knew a lot of cases of debt non-repayment, inferior quality sales as well as multiple cases of robbery and forced goods withholding by either party⁵⁸¹, which did not promote the development of mutual trust and the improvement of credit relations.

The interdiction on credit trade was not as much due to the lack of trust to merchants from Russia (the same rule extended on Italians, Flemings and Englishmen)⁵⁸² as their urge to keep a monopoly of the Hanseatic League to show how important Novgorod was for the Hanseatic trade. The Novgorodians, being aware of Hansa's aspiration to limit the trade independence of Novgorod, were searching for the gate to the sea route and trying to establish trading contacts with northern cities of the Baltic Sea, particularly with Swedish cities in XIV century.

The difficulties of Novgorod trade relationships with Hansa suggest that West European-type credit documents were used only by German merchants among themselves, and were not used in operations with merchants of Northern Russia.

At that time the in-house monetary system based on silver rouble formed in Novgorod. In the early 15th century the richest Novgorod merchants who take part in an association called «Ivanovskoe sto (*Hundred of Ivanovo*)» lead financial and credit operations. Credit operations took place at local and boundary markets on holytide mainly. Churches and monasteries became the first lending institutions⁵⁸³, but, as a whole, the development level of credit relations was low.

However the economic independence of Novgorod and Pskov was not good enough for Moscow Tsars. In the end of the 15th century Tsar Ivan III deported the principal Novgorodian merchant families from Novgorod to other cities, having

replaced them by Moscow merchants. In 1510 Tsar Vasiliy III made the same in Pskov, which resulted in declining of these ancient trade centers.

Apart from Novgorod, German merchants (mainly from Riga, a German city at that time), traded with Polotsk and Smolensk⁵⁸⁴. Trade operations with Riga and neighboring cities was of another specificity than the trade with Novgorodians. According to *The Debt Book of Riga*, there were a lot of merchants from Russia in Riga who had property there. Several German trading houses, in particular, the house of Brunov from Cologne, led financial operations with only Russian merchants and acted as banking houses for them.

The Debt Book of Riga contains data about numerous credits taken by Russian merchants in Riga between 1286 and 1327, including eight transactions in 1286, fifteen in 1287, the maximum of 43 in 1292, 17 in 1293 and 10 in 1297. Since 1298, the quantity of credit deals fell dramatically: only one in 1298, 9 in 1301, and then decreased again to one deal per year in 1317, 1319 and 1327. Loan amounts were comparatively insignificant: from 1 to 15-20 marks. It was only in 1287 that Nikolay Volk from Suzdal borrowed 123.25 marks in silver. Terms of credit were different: from short-term to yearlong terms, and even two year long credits. This shows that the Hanseatic League's decree, which prohibited German merchants from granting loans to merchants from Russia (or borrow from them), was in force only in the course of trade with Novgorodians⁵⁸⁵.

3.2

The History of the Debt Obligations in Moscow and Russia Between XV and XVII Centuries. Kabala.

THE TATARS INVASION severely damaged the development of Ancient Russia. In the mid XIII century, the lands of Northern Russia turned out to be under the domination of the Tatars. The huge tribute exacted by the Tatar baskaks impeded the improvement of commodity circulation at local markets.

Tatar-Mongols used the system of tax collection developed in detail by Chinese officials. Every year, the Tatars-Mongols exported a significant part of domestic product in the form of tribute, the amount of which was calculated based on the principle of decima, i.e. 10% of all goods, products and human resources. As a result, the role of cities changed. After handicraft declined, they lost their role of economic centers, centers of commerce. Along with the agriculture growing, the economy's principles changed—the ancient Russian trade economy was replaced by the natural agricultural economy.

The socio-economic system of Muscovy differed significantly from the system of Ancient (Kievan) Russia by its attitude toward entrepreneurship and credit activity. Unlike Kievan Russia, Novgorod and Pskov, another concept of a society and state was the base of Muscovy. This concept was shaped at the time when Russia was influenced by the Golden Horde.

Historic circumstances of Muscovy's nascence did not favor the trade development, because this state was situated on roads off the ancient trade *route*, which connected the Black Sea and the Baltic sea. Kiev was the main intermediate point of transit trade in XII century. Muscovy was forced to recollect strength to preserve its political independence fighting with the Tatars, which resulted in the formation of the system where autonomy could not exist, and all trade and credit operations had to be submitted to the supremacy⁵⁸⁶.

Between the XIII and XV centuries, a lot of trading cities and guilds of merchants existed in the West. Volumes of commodity-money turnover augmented and bills of exchange began to be used, however none of this existed in Northern Russia. There were several trading cities: Novgorod, Pskov, Smolensk and Polotsk, and since the end of XV century, Moscow⁵⁸⁷, where merchants formed a separate group.

Even though certain privileges were given to the merchantry in Muscovy, public service was obligatory, which did not favor trade development. Merchants were under the constant threat of goods and money confiscation, for which there were many reasons in the legislation of that time.

The aspiration of the merchant class to hide their trading operations and income did not promote the development of trade law institutions⁵⁸⁸, particularly the practice of drawing up credit documents.

The main reason for merchants hiding their income was the fact that Northern Russia was influenced by the Golden Horde for a long time, a state with a tremendous territory that was created as a consequence of the Mongol-Tatars conquests. The control over trading routes was one of the prominent aspects of the Golden Horde's policy.

The Golden Horde khans, such as Mengu-Timur, worked hard to improve the trade with Novgorod (through Moscow). Thus he promoted the development of trade between Novgorodians and the Hanseatic cities (merchandise from them was transported through Novgorod to the Orient), as well as the Italian settlements in Crimea⁵⁸⁹.

According to A. M. Nasonov, who researched in detail the history and methods of the Tatars policy, it is necessary to admit the fact that the Tatars significantly influenced all aspects of Northern Russia's history⁵⁹⁰. This influence has greatly increased since the disintegration of the Golden Horde, when most of the Tatars passed their services to Moscow princes, and embraced Christianity and Russian names. Most likely, it was at this particular time that in Northern Russia, the terms describing the financial administration of khans were borrowed: for example, *denga*–*dengi* (money), *tamga*–*tamozhenniy nalog* (*custom tax*), etc.⁵⁹¹.

One of the consequences of Tatars-Mongols's influence was the apparition of the debt kabala institution in Muscovy. Originally, the word kabala⁵⁹² meant a debt obligation. It is derived from the Arabian word *kabal*, meaning a purchase contract, acknowledgement of a debt, or obligation. N. O. Nersesov thought that the word kabala is derived from the Arabian word *kubul*, meaning a consent, which in its turn derives from the verb *kabilya* (to agree, chap hands). He also points out that the Muslims of Transcaucasia even in XIX century used an acknowledgement of debt called *gyabyala*, which derives from *gyabu*⁵⁹³.

The kabala institution was adopted from the Muslim countries through Tatars during the second census of the Russian population in 1257, which was done by the Tatars in order to collect taxes (the census was done by the baskaks, the Chinese officials who were employed by the Tatar-Mongol Empire to collect taxes)⁵⁹⁴. This also resulted from the fact that Russian princes had often borrowed money from Tatar merchants. Thus, Jury Dmitrievich, Prince of Zvenigorod, reminded his nephew, Vasilij Vasilevich, in the contract they agreed upon:

« I have borrowed 600 roubles from guests and cloth-makers and paid your debt to Rezep-Khoza and Abipa to kabala. I signed this silver on kabalas, and you should remove this duty of 600 roubles from me. Be in contact with those guests without me; I will only name you those people from whom I have borrowed the money⁵⁹⁵. »

In Muscovy, the act of kabala represented a liability document⁵⁹⁶. Step by step, the kabala act has divided on two main forms: kabala of borrowing, a sort of debt obligation, and kabala of servicing, providing for a debtor to work for a lender with a fixed undervalued payment on account of a debt. The second form of the kabala act was widely spread, having become the reason for slavery. Thus the kabala act was converted from a debt document into an agreement on converting to temporary slavery with the deduction of the debt amount.

The first documentary records of the debt kabala act application in Russia appeared in XIV century, and slavery was mentioned during XV century. However, kabala acts had probably appeared in Russia earlier, and thus the practice known even during the times of *Russkaya Pravda*, when a debtor lost his private freedom, was continuing⁵⁹⁷.

The kabala act was first mentioned in connection with a trip of Dmitriy Donskoy's ambassadors to Constantinople at the end of XIV century, on the occasion of the metropolitan Mitay appointment. Ambassadors had white charters with them, clean parchment blanks stamped by velikiy knyaz, on which to write kabala acts. If necessary, (the kabala act that S. M. Soloviev called a *weksel*), they could borrow money from the Italian and Oriental merchants to buy goods necessary to start negotiations. Prince Dmitriy permitted the ambassadors to write the kabala act in the amount of 1,000 silver roubles and more on behalf of him if necessary⁵⁹⁸.

Among the basic legal sources, in which one can find the rules of debt kabala usage, the Law books of 1497 and 1550 and the *Council Code* of 1649 may be cited. After the acceptance of Ivan III 's Law book in 1497, where clauses 15 and 36 are devoted to a kabala, the kabala acts began to be widely used to restrict the freedom of peasants who, having received a credit, were obliged to serve their lender to work out their debt. This work often lasted for decades, making free peasants serfs. However, the episodes of enslavement, when a free person became a serf without his consent, are unknown, and Ivan IV's Law book provided for a death penalty for this⁵⁹⁹.

At that time, the following types of debt kabalas were known:

- 1) *simple debt kabala*, a written IOU with the debt amount and payment date indicated;
- 2) *mortgage kabala*, a debt obligation, according to which immovables, mostly land, were granted;
- 3) *hiring (interest bearing) kabala* obliged a debtor to pay (by his money or property) so called rostovye, i.e. increasing interests on the amount borrowed;
- 4) *trust kabala* provided for the liability of a debtor before a person who went for bail for him to the lender to pay off a debt before payment date;
- 5) *servicing kabala*, a debtor instead of payment of interests was obliged *to serve* to a lender, i.e. to work for him. This type of the kabala was divided on unlimited, lifelong, and fixed-term kabala acts⁶⁰⁰.

Enslaving debt obligations were recorded in special handwritten kabala books. Let us cite a typical example of a simple mortgage debt kabala:

«Me, Nikita Ofonasiev, Bortenev's son, took 80 rubles in Moscow from Tretyak Lefontiev, Gleb's son, for a one year period, from Epiphany to Epiphany. To do so, I pledged my property, the village Chernaya in Volotsky county along with the river Chernaya, forests, meadows and all other territories related to this village since early times. Tretyak will live in this estate, turn up the soil and receive profit from peasants on the account of half the interest incurred to my debt. The other half of the interest I will pay to Tretyak as is common according to customs, on the fifth the sixth (. . .)⁶⁰¹. »

In the mid-XVI century, by the time the new Law book (1550) was published⁶⁰², the land credit acquired a significant importance, which resulted in further developing of the debt kabala institution. A mortgage credit on landed property was given in exchange for a mortgage kabala, which, in case of the non-return of a debt, was transformed into a title deed, and the land pledged became the creditor's property.

The kabala acts gradually became the most popular way of debt execution, because they provided for a strict discipline. Kabala acts had to be drawn up and recorded in

the form of an act by special clerks, and legalized by the witnesses' signatures (from two to six people depending on the debt's amount; for the kabala at the amount less than 10 roubles a simplified form was established). In case that the return of a debt was impossible, a recovery by enforcement was applied, as well as the delivery of the debtor in person⁶⁰³.

In the case of a servicing kabala, a debtor had to hire to his creditor on account of accumulation of interest. When his debt was reimbursed, the debtor was discharged from his enslaving obligations. As a rule, the kabala act of this kind was drawn up as a typical fixed-term instrument of loan:

*«I have to serve my creditor for interests until the debt term is over»*⁶⁰⁴

On April 25, 1597 a constitution (a decree) was published, stating that every personal service lasting more than a half of year, turned a person into a serf. The decree aimed to regulate the servicing kabala institution. Although this decree added nothing beyond the substance of enslavement and confirming the relationships which were already established, it focused on the servicing kabala, derived from the simple debt kabala of the 1430s, which later became more important in comparison to a simple debt kabala⁶⁰⁵.

The most detailed reglamentation of institutions of servicing and debt kabalas can be seen in the *Council code* (1649) of tsar Alexei Mihailovich, where the obligatory requisites of kabala were stipulated. The document was not valid without these requisites. When a debt was wiped off, a notice on the kabala act was made, which disabled a debtor to prove debt repayment differently⁶⁰⁶. Both kabala acts, the servicing and the debt, had been in use in the Russian Empire until the beginning of XVIII century, when first weksels appeared⁶⁰⁷.

For this study's purposes, it is the simple debt kabala which is interesting, a simple debt document not engrafted by such circumstances like the personal dependence. The debt kabala may be considered as a prototype of a promissory note that emerged in Muscovy under the influence of al-kabal, a debt commitment that the Tatars had acquired in the Arabic countries after having accepted Islam⁶⁰⁸.

The debt kabala was a document which confirmed the money credit. According to P. P. Citovich, the kabala act had some advantages against a weksel, as it could be drawn up to a bearer⁶⁰⁹. N. O. Nersesov believed that debt kabala acts in their legal effect resembled the original forms of written debt commitment of other peoples, and affirmed that in XVI century, *verchie kabaly* were used, which were given to an arbiter so that he would issue a kabala act for a guilty person after having made a judicial decision. In such cases, as a debt obligation in serfdom was indissolubly related to the document itself, every kabala act's holder could appear in court and require the court to wipe off the debt presented in it. In the kabala act issued on December 14, 1678, it was recorded that peasant Markov borrowed 80 roubles from Staretz Saveriy (a monk) from the monastery of Yakutsk, taking an obligation to provide for 150 puds

(sixteen kilograms) of rye in return. «The one who presented the kabala act before court is the claimer⁶¹⁰. »

In XVII century, the severity of debt collection in the form of kabala was so severe that «those who did not have kabala acts, or lost, tore, or damaged them otherwise, were considered untrustworthy, even if 20 witnesses supported them⁶¹¹. »

In XVII century, two main forms of debt obligations were used—kabala and pamayt⁶¹² (a reminder). These documents were preserved as copies of court cases heard in Posolsky Prikaz; the documents were drawn up in foreign languages, and translations were attached to them. By analogy with the similar Russian documents these documents were called kabala acts, or a reminder⁶¹³. A debt obligation was drawn up in a foreign language providing that a foreign merchant was the creditor or the debtor. If a Russian merchant was the creditor (or the debtor), the debt kabala or the reminder was drawn up.

These two types of documents differed significantly from each other. The debt kabala (of borrowing) act represented a liability of the debtor who took a definite sum on credit to return the money in time. The debt reminder was drawn up in the name of a debtor who took certain merchandise from his counterpart on credit, with a delay of payment. The archived documents show the typical form of such obligations:

«The copy of kabala word for word.

Me, Ivan Adamov, Fandeldin's son, a merchant from Denmark, contracted a debt of 24 rubles 23 altyn 4 Moscow's dengi in Moscow

from a peasant Prokofiy Andreevich Malinovsky (from Sokolsky estate of a boyar Fedor Ivanovich Sheremetiev) on March 25, 155 until the Trinity of the same year. Until this date, the debt is calculated without interest, but if I do not return the money back in time, I will pay an interest as is common according to custom (20%).

Witnesses' signatures.

The kabala is drawn up in 7115⁶¹⁴.

In this document, there are typical elements (used in virtually all kabala acts with insignificant and unessential differences):

1) debtor (debtors), 2) place of transaction, 3) creditor, 4) amount of money and the specificity of currency («Moscow's dengi», «khodyachi» (money in circulation) etc.), 5) date of the deal (year, month, date), 6) term of payment, 7) interest («as is common according to custom»), 8) if there are several debtors, the obligatory formula of responsibility for wiping off the debt, 9) witnesses of the deal (poslukhi), 10) name of the drawer of debt kabala act, 11) year of debt kabala act's drawing up, 12) endorsements of debtor, creditor and witnesses on the kabala act's reverse side⁶¹⁵.

The debt reminders had a similar form, which can be seen in the following document:

«The copy of debt reminder word for word.

This debt reminder is issued for me, Anton Galaktionovich Badeev and my brother Fedor, to remind us that we borrowed merchandise from a foreign merchant Grigory Ivanovich Raks at the amount of 670 rubles. The first part of our debt, 300 rubles, must be returned on St. Philip's day of this year 7153, the second part of the debt, 370 rubles, on Velikden of the same year 7153. This reminder was written by me, Anton Badeev, with my own hand and on my brother's demand in July, 7153»⁶¹⁶.

Thus the form of a reminder represented an abridged version of a debt kabala act and contained the following elements: 1) debtor (debtors), 2) name of the person who allowed goods on credit, 3) value of goods, 4) term of payment, 5) name of the drawer of the debt reminder (it was always the debtor himself), 6) date on which the reminder was drawn up.

Blank forms used by West European merchants traded in Russia in XVII century were similar to the form of a debt kabala act. Sometimes it was pointed out in these documents that the debt obligation bears not only the debtor, but his successors or clerks. As opposed to kabala acts, interest was not mentioned in debt obligations of foreigners (perhaps they were included into the debts themselves). Occasionally, a place of the deal was not indicated as well as the absence of witnesses. The existence of a well-defined form of debt kabala act and its abridged version, the debt reminder, and their similarity to documents issued by West European merchants show that Russian and West European instruments of credit are analogues⁶¹⁷.

It is necessary to point out the mixed feeling of public authorities towards the kabala act because numerous examples at a later date became the reasons for the enslavement of free people⁶¹⁸. The court cases regarding *weksel* matters that were similar to kabala cases have become widely spread later. As S. M. Barats pointed out, although the economic conditions have changed over centuries and social customs became less severe, the specific features that had previously generated kabala cases had not disappeared⁶¹⁹.

Let us examine the socio-economic background of the further development of credit relations and the transformation of the institution of debt kabala to *weksel* operations. Muscovy, as well as Russia during XVII century, was isolated to a great extent from the economic processes taking place in Central Europe. That is why the Russian commerce of the period from XV century to XVII century, was oriented to a barter; cash was used in small-scale trade mainly. Goods, not money, were the main form of capital at that time⁶²⁰.

Another specificity of Muscovy and Russia of XVII century was the fact that the first industrial enterprises that emerged between the end of XV century and the early XVI century were state military enterprises. The similar «governmental» sphere of economy was the house building directed by Prikaz kamennyy del (the department of construction), which invited foreign specialists, mainly from Italy, on public service.

Although until XVI century, trading contacts with Western Europe had been effectuated through Novgorod and North-Western cities such as Polotsk, Smolensk and Vitebsk, in XVI century the Russian trade spread due to the rise of Moscow. In addition, the northern ports of the White Sea became important; through these ports, Moscow established direct trade relationships with Western Europe, including England and Holland⁶²¹.

Among the factors that promoted the growth of Moscow's trade importance is the waterway from Moscow to the Volga River, leading to the Caspian Sea and to the Orient, frequently traveled by Muscovy merchants. Eastern merchants brought their merchandise to Moscow as well. Cash agreements were drawn up with these merchants, and the certifications of indebtedness and kabalas were given in their names. The most important tradeway for the development of Moscow trade relationships was the tradeway along the Don river, through which the trade with the Italians and Byzantium was effectuated during XIV century until the first half of XV century, while the settlement of Russian merchants existed in Constantinople. The kabala was issued in Constantinople by Kiprian, Mitropolitan of Rostov, and Nikolav Notare Diormineft of Greece in the amount of 1,000 ancient Novgorodian rubles with witnesses to these relationships. This document proves the aspiration of Russian merchants to help Greek merchants⁶²².

At that time, credit operations were primarily conducted in the form of traditional usury. Although the cases, it is noteworthy to remember such noble examples, as the repayment by Velikiy Knyaz (Great Prince) Vasiliy Temniy the debts of his enemy, the briefly scepter wielding Yuriy Galitskiy, to Moscow and Tatar merchants⁶²³. Although Velikiy Knyaz could annulate debts, as this was done frequently at time, he decided to acknowledge the debt, which may be seen as a certain level of credit culture.

Despite of the unfavorable conditions for the development of credit operations, even since XV century, several examples of credit operations carried out in the course of trade with Hansa are known. In 1583–1584, Moscow merchants and boyars allowed to A. Marsh, an English merchant, an immense commodity loan in the amount of 12,000 roubles⁶²⁴.

In XVI century, credit operations, apart from the above described debt kabalas, were drawn up in the form of poryadnaya gramota (contract letter) (lease agreements, employment contracts, personal service contracts, etc).

In the early XVII century, poryadnaya gramota was gradually replaced by zaemnye zapisy. Let us cite a typical example of zaemnaya zapis (record of borrowing):

*«Me, Matvey Martynov and my son, borrowed 15 roubles from the monastery administration. For this debt, I have to live in the monastery and work as a peasant»*⁶²⁵.

According to M. A. Rozhkov's opinion, the spread of such agreements proves that credit operations began to prevail in credit relationships, which resulted in the increase of debts that peasants could not wipe off, forcing them into slavery under their creditors.

In the first half of XVII century, the Russian government allowed significant contracts to be made with foreign entrepreneurs to stimulate several economic spheres, particularly arms manufacture in Tula. The government also borrowed credits itself, for example, from English merchants who traded with Russia in 1617. Before Peter the Great's reign, institutions of commercial credit did not exist in Russia, and credit operations were held mainly by foreign merchants, who used West European type bills of exchange among them, and took debt *kabalas* from Russian debtors.

In the early XVIII century, in credit operations with Russians partners, foreign merchants began to apply the provisions of bill of exchange circulation, and *zaemnye pisma* (acknowledgements of debt) that merchants gave to their creditors. In these acknowledgements of debt, the sum of the debt and payment date were indicated. This type of document represented a Russian prototype of a bill of exchange, and was mainly used in Arkhangelsk, an important center of international trade⁶²⁶.

At that time, more and more foreign merchants came to major commercial cities of Russia, such as Novgorod, Arkhangelsk and Moscow. Their participation in the process of crediting favored the entrance of capitals in Russia, as well as the steady penetration of West European type bills of exchange. These *weksels* were first mentioned at the end of XVII century, when the government began to use them to transfer money to maintain the army (and avoid taking great sums of money with them).

3.3

The Socio-Economic Background of the Spread of Credit and Weksel Operations Between XIII Century and XV Century in Southern Russia and Between XVI Century and XVII Century in Ukraine. Mamrans.

THE CONDITIONS OF the development of credit operations in Southern Russia were different from the ones in Northern Russia. At the end of XII, despite the race for power between princes, Southern and Northern Russia were considered a united state. However, in the early XIII century, after the Tatar-Mongols' invasion, substantial differences in their political and economic lives became obvious.

The major specificity of socio-economic processes on the lands of Southern Russia was that instead of long-lasting influence of the Tatar-Mongol Empire, as it had been in Muscovy, the reign of the Mongols in Southern Russia lasted only hundred years. Thereafter, these lands were merged in the Grand Duchy of Lithuania, thus being involved in the western market. The commodity-money turnover intensified on the territory of Southern Russia, which diminished dramatically during the Tatar-Mongols' reign. In XIV century and the early XV century, Lithuanian Princes Gedimin, Olgerd and Jogailo annexed a huge territory from the Dniepr to the Black Sea, and in 1362, Kiev fell under the power of Lithuanian

Prince Olgerd. Thus a major part of ex-Kievan Russia was merged with the Lithuanian-Russian Commonwealth, including princedoms of Kiev, Chernigov and Volynskoe.

In the early XIV century, the territory of the Lithuanian-Russian Commonwealth joined the Mediterranean trade circle, due to the activation of Italian trade relationship with the Black Sea countries.

The Black Sea trade routes were under control of Byzantium for centuries, and the Black Sea was «the closed sea» of the Empire, to which Byzantines did not allow foreign merchants to penetrate. After the seizure of Constantinople by the crusaders and the creation of the Latin Empire in 1204, the situation changed. Having begun the occasional trade with the Black Sea countries, Venetians significantly expanded it by the 1260s. However, trade operations reached the zenith due to Genoese, and a new political situation in the mid XIII century worked toward it.

Genghis Khan and his successors' conquests not only devastated traditional trading centers, but changed trade routes themselves. However, a united governance was established on the territory of a huge empire, so called *Pax Mongolica*. These radical changes granted Italian merchants the possibility to use the trade route through the Black Sea to Tavriz (Iran). Commercial settlements of Genoese in the Black Sea region, such as Trapesund on the southern coast of the Black Sea and Soldaya (Surozh) in Crimea were the most important there. This trade flourished at the end of XIII century and lasted until the 1340s.

Italian merchants were interested in the development of trade with the Polish-Lithuanian Commonwealth of their merchandise, as well as oriental goods received mainly through Tavriz. Thus a new trade route from the Genoese Crimean ports Soldaya (modern Sudak) and Kafa (modern Feodosia) in the direction of Lvov appeared. In Perekop, this trade route (which was called Tatarskiy, or Galitskiy) combined with another one, leading through Astrakhan to Central Asia. Most of the Italian goods and imported merchandise from the Orient came to the Lithuanian-Russian Commonwealth by this trade route⁶²⁷. As a result, in the XIV century, Lvov became an important trading and commodity-money turnover center, where Italian, Armenian, German and Polish merchants could get together. Royal charters given to Lvov to carry out trade fairs there (the first one was issued in 1472) favored this.

There is important evidence of the activity of Armenian merchants from the Lithuanian-Russian Commonwealth in Moscow, as well as their crediting operations from the German traveler Martin Gruneveg. He noticed that among the foreign merchants living in Moscow, the Polish were the

leaders, followed by the Armenians. In particular, the Armenian merchant Manuylo from Kafa came to Moscow from Kiev with a Kievan merchant Stephan was well-known. M. Gruneveg called all natives of Southern Russia and Lithuania the Polish, judging them to be the main creditors of Moscow tsars⁶²⁸. He also mentioned a lot of knights of the road, who were robbing on the trade route between Kiev and Moscow, as well as about robbery of the caravan of an Armenian merchant⁶²⁹. A lot of credit operations necessary to activate the trade were held by Jewish merchants of Lvov, and this dissatisfied Christian merchants. Jewish baryshiki (hucksters) gained a lot of profit from commission business. All trading operations in Lvov involved the participation of these hucksters and usurers (*wekslarzow*)⁶³⁰.

Among foreign merchants in Lvov, the Italian merchants were instrumental. In Poland, especially in Krakow and Lvov, there were so many Italian merchants at the markets and fairs that everyone could notice them there⁶³¹. The trade in which Italian (and German) merchants participation promoted the expansion of western methods of financial and credit activity in the Lithuanian-Russian Commonwealth, including bill of exchange operations.

Let us study the specificity of credit and bill of exchange operations effectuated by Italian merchants in the Black Sea region's settlements, where different forms of commercial credit were known. The interest credit (*mutuum*) has to be mentioned, which was preached as usury by the Church. For that reason, in the course of Italian settlements' trade, this kind of credit was disguised as an interest-free loan or a maritime loan with risk repayment. Purchasing of goods on credit was frequently practiced. The most popular way of mutual exchanges and transfer of funds was *cambium*, the Italian type bill of exchange. It was used to pay salary in trading stations of the Black Sea region, to transfer succession, and as a latent form of loan (*cambio secco*—«dry» bill). Italian merchants used a simplified form of bill of exchange operations in which only two persons could participate; the recipient of the amount or his trustee, or a banker or money changer, who paid the money in another place. A bill of exchange of this kind was rarely paid off after the bill was sighted. *All usanza*, or a payment after the specified period determined by local customs, was practiced more frequently.

Only two ways to pay money existed: the bill of exchange agreement's amount had to be paid in local currency at the rate of the place of conclusion of the agreement (*certo*); a fixed sum in foreign currency without indication of the local currency rate had to be paid at the rate of the market on which the bill of exchange was issued (*incerto*). Either method could be chosen on the basis of its profitability. For example, in Trebizond the rate of asper was higher than the one in Kafa, and because of this difference, a profit might be made in the course of exchanging (the first method).

Occasionally, there were very complicated transactions, proven by the following example:

«This bill of exchange was issued on July 1, 1292 in Genoa to Tavriz and Trebizond, who stipulated a payment on the 8th September of this year. If merchants arrive to Tavriz after this date, the debt should be paid 8 days after their arrival. In case of the payment in Tavriz not taking place, the money must be returned to Genoa via recambium, not at the rate of 10 soldi per a golden dinarius (the rate of Tavriz), but at a higher rate of 11 or 12 soldi per a dinarius. The term of 7-8 months was established for recambium⁶³².»

If it was impossible to execute a direct bill transaction procedure between distant cities, the bill of exchange was issued to Constantinople, from which it could be transferred to Venice. The profit rate of bill transactions in the Black Sea region was 10%; in case of recambium the rate increased to 20%⁶³³.

It is also important to note the development of credit operations in the Lithuanian-Russian Commonwealth, as well as in the Polish-Lithuanian Commonwealth. Despite the shortage of banking institutions, even in XIV century, credit relationships were highly developed. Commodity-money turnover in the second half of XIV and in the early XV century was so intense, that many different types of coins were used (along with Polish, Tatar and Lithuanian coins, Hungarian, Moldavian, Genoese and other European coins were also in money turnover). These factors resulted in objective demand for money-changers. However, the total volume of trade on the lands of Southern Russia and the Lithuanian-Russian Commonwealth was not even close to trading activity in Western countries, especially Italy. Cities developed slowly, and barter prevailed over the trade for money⁶³⁴. Unlike Western Europe, credit operations were not widely spread.

The development of the Lithuanian-Russian Commonwealth's financial system was related to collecting of numerous taxes. Jewish merchants migrated from Poland, were entitled to exclusive privileges, particularly the right to trade freely on the entire territory⁶³⁵ and carry out credit operations. This resulted in the controlling of operations by Jewish usurers, who had the right to trade almost any goods, with only a few exceptions, and they were not obliged to find out their origin⁶³⁶. There is evidence of Christian usurers, such as Nikolay Verzhinek, Gan'ko Kerich, Ezhi Gevel', a merchant from Gdansk, the Morshins and the Shvartz families from Krakow, and the Loyts bankers family from Szczecin, etc. Their actions differed from those of Jewish usurers: while the canon law prohibited in principle the Christians to provide loans to gain profit, the credit activity of Jewish usurers was limited only by the Varetsky Code (1423), which prohibited crediting on movables⁶³⁷.

As a whole, the ancient credit forms were used in villages, whereas in cities more advanced forms brought by migrants from Germany mainly were used⁶³⁸. As a rule, loans were lent on the collateral of land or property. The credit on the security of property was the cheapest (10-20% in XIV to the early XV centuries, and 5-8% in the mid to the end of XV century). High risk crediting (from 50 to 100%) without collateral was practiced among usurers. During XV century, the practice to sell goods on credit was used, trade contracts began to be concluded and the mortgage system that envisaged land pledging to receive a loan arose. Previously, credit on the security of land was allowed with reservation of the creditor's right to use the pledge until he received the principal of the loan. Since XV century, the loan on the security of land with reservation of the debtor's right to possess it before paying the principal of the loan appeared. Along with the outspread of individual crediting, the first banking companies appeared, which carried out a great volume of credit operations at high interest rates (50-100%)⁶³⁹. In virtually every city and town, merchants or rich craftsmen who dealt with credit operations were present. During XVI century, Krakow became a popularly accepted center of credit.

The first institutions to deal with credit activity were called *pobozhnye banki* (church banks), established at churches and monasteries. This practice was borrowed from medieval Italy. The prototype of this kind of bank was a brotherhood, created in 1568 in Lvov at church of Assumption. It gave its members interest-free loans. Later, a well-known political preacher, Jesuit Peter Skarga, founded *pobozhnye banki* in Vilna (1579), Krakow (1587) and Warsaw (1589). The Armenian community of Lvov created four *pobozhny* banks between 1640 and 1728⁶⁴⁰.

At the end of XV and in the early XVI centuries, the attacks of Crimean Tatars on Western, Central and Northern regions of Southern Russia became more frequent, which resulted in looting of cities and the worsening of economic conditions, including territories with relatively stable commodity-money turnover. Another reason for temporary depression of commodity-money turnover on lands of Southern Russia was the expansion of Tatars in the Black Sea region, the liquidation of Italian settlements in Crimea, and, as a result, the total retargeting of foreign trade of the Lithuanian-Russian Commonwealth towards Western Europe and trade routes of the Baltic sea.

All systems of transit trade of the Orient with Western Europe through Lvov and Poland were broken. The important element in this system was Italian merchants with their settlements in Crimea. A new agreement (Union) between Poland and Lithuania in 1569 was formed, as a result of which the Lithuanian-Russian Commonwealth was merged to a new state. The Polish-Lithuanian Commonwealth, named *Rech Pospolita* with its capital in Warsaw, favored a steady renewal of economic ties, as well as the revival of local markets at the lands of ex-Southern Russia. Because of this, Volhynia and Galicia became the regions with the most developed commodity-money turnover.

At that time, the Polish gentry accumulated substantial funds, having traded corn, cattle and other agricultural products. The trade was revived, and the Polish-Lithuanian Commonwealth became open to foreign merchants⁶⁴¹. The following important trade routes ran through its territory: from Moscow through Chernigov and Kiev to Moldavia and Crimea, from Crimea through Kiev to Lithuania to the Baltic sea, as well as to Königsberg and Gdansk. Ukrainian lands that were part of Poland turned out to be an important source of agricultural products for Poland and Western Europe, as well as an outlet area for German and Dutch goods⁶⁴².

The trade-economic importance of Kiev increased as well. According to Mikhalon Litvin, the author of the treatise *About Customs of the Tatars, Lithuanians and Moscovites* (1550), in the mid XVI century, Kiev inundated with exterior goods because of the absence of a more known, shorter and safer route than the ancient route leading from the Black Sea port Kafa to Kiev. Through this route, they transported precious stones, silk, frankincense, incense, saffron, pepper and other fragrances from Asia, Persia, India, Arabia and Syria to Moscow, Pskov, Novgorod, Sweden and Denmark. M. Litvin pointed out that Kievan governors, merchants and money-changers had enriched themselves because of this trade, but he lacked the details of the activity of these money-changers⁶⁴³.

It is worth mentioning the legislative documents which regulated legal relations on Ukrainian lands which were part of the Polish-Lithuanian Commonwealth.

Latin-speaking legal culture penetrated in the Lithuanian-Russian Commonwealth even in XV century. The British Latin schools of XVI and XVII centuries were instrumental in this process. The evidence of the development of judicial culture was created by the activity of Leonard Lessius (1554-1623 rr.), Lvov Academy's professor, who gave a course of lectures there in exchange law at the end of XVI century⁶⁴⁴. His course was first published in 1605 as a separate volume of more than 700 pages. L. Lessius' authority was recognized by Rafael de Turry⁶⁴⁵.

As far as law sources are concerned, during XVI and XVII centuries, the customs were landmark⁶⁴⁶. In addition to the influence of the custom based law, after the Union of Lublin (1569), the source of law was published in the form of printed books of Sejm's regulations. Between the last quarter of XVI and the first third of XVII century, the ideas of Magdeburg law were revived and influenced «Saxon», a German code of urban law which was distributed to municipal authorities in the Polish language⁶⁴⁷. In XVII century, it was not the original texts of German books of law that were used in Ukraine, but their translation to Polish made by P. Sherbich (1581). Hence why the Magdeburg law was called the Polish law⁶⁴⁸.

However, the main legislative act was the Lithuanian Statute of 1588, embodied provisions of law of the precedent statutes, so called the Ancient Statute of 1529⁶⁴⁹ and Volynsky Statute of 1566⁶⁵⁰, which, in their turn, embodied the customs based law

of Lithuania, Ukraine, Byelorussia and Poland. The Lithuanian Statute represented a corpus of civil, criminal, administrative and other legal procedures, and a new generation of Ukrainian gentry entered into public life in the second half of XVII century considered that the provisions of the Lithuanian Statute held up traditions of «Russkaya Pravda»⁶⁵¹.

The second Lithuanian Statute (1566) stipulated for the existence of three courts—zamkovy, podkomorsky and civil (criminal, economic and civil). Civil courts heard civil cases, and acknowledgements of debt and instruments of lien were registering in special books⁶⁵². Debentures have gradually become formal; that can be traced out in the first Statute of 1529, where legal provisions of law of obligations were stipulated which regulated contractual relations, including loans. As a rule, agreements were drawing up in presence of witnesses and were concluding by «perebivanie ruki» (chop split of a handshake by the witness), «pristavlenie shapki» (tossing hats), «vystavlenie magarycha» (celebratory meal with spirits) etc. Besides, the provisions of the Statute of 1529 r. regulated deferred methods of payments on property liabilities⁶⁵³.

The records of the judgment book *Litovskaya Metrika* show that in several cases, tribunals requested a written agreement, including cases in which the loan exceeded 10 kops of grosz (grosz is a monetary unit in Lithuania; 1 kop is 60 Lithuanian groszes). According to provisions of part 10 of the Statute of 1529 (clause 3), neither a member of the gentry nor bourgeois could lend more than 10 kops of grosz without a debt record documenting this operation. The Statute of 1566 made this provision more severe: in the amount of a loan of 10 cops of grosz, a written agreement with receipt to a creditor was obligatory. Non-gentry creditors could demand payment of a debt with records in debt books⁶⁵⁴. This procedure of formalization continued in the Statute of 1566. Thus clause 9 of part VII stipulated that agreements (records) on money borrowed became valid if they were concluded in the presence of witnesses, stamped and signed by the party who made the record, as well as signatures of witnesses⁶⁵⁵.

The concept of the unified form of these documents relates to customs tax collecting. In the Lithuanian state, special people, known as spravtsy, performed this job. Acknowledgements of optional form (customs free) were used, due to which the debt payment was made. Thus according to the contract of 1563 on lease of «volynsky customs taxes,» (the question is about lease of the right to collect customs taxes) all customs free acknowledgements, except for letters issued by Ottoman merchants, had to be paid.

Among legal terms of the Lithuanian Statute was a term «kvit». Researchers interpret it as quietus⁶⁵⁶, warrant and even a weksel⁶⁵⁷. In Polish, kvit simply meant a record (zapis) in most cases, in addition to the clause 9, where the term «КВІТОВАТИ» (kwitowac)—to give kvits—is preserved. In the Russian translation of 1811, the kvit was once called the bill of sale, and a simple receipt in other cases. «On records and sales» a notion «zapisnoe pismo» (a recorded acknowledgement) appeared in clause 7:

«The one who will buy out the pledge is obliged to return zapisnoe pismo (recorded acknowledgement) and make a corresponding record in the register book. The one who will take money on credit is to be given a similar acknowledged, and this has to be recorded as well. Such acknowledgments must be signed and sealed by a debtor, as well as by guarantors. Those who do not sign must seal the document along with three guarantors indicating the amount of the debt and the maturity date . . . »⁶⁵⁸.

In clause 7, *memran* and *membran* (evidently, *mamran*), named «blanket» in the Russian version, were mentioned twice⁶⁵⁹. Evidently, *kvits* existed simultaneously with customs free letters (by these our acknowledgements or *kvits*)⁶⁶⁰, being a more formal version of liability documents. *Kvits*, along with customs free acknowledgements, were used at customs as instruments of payment and a means of payment between tax payers, tollmen and the state treasury.

Until 1569, customs free acknowledgements and *kvits* of gentry had to be paid from *skarb*, the state treasury. The Contract of 1569 on Lease of Podlyashsky Customs Taxes contains the following:

«Tollmen collected significant amounts of money on kvits but delivered treasury kvits to the state rather than money in cash, which incurred heavy losses for the budget»⁶⁶¹

The money accumulated by *spravtsy* was given to the state *podskarbiy*, or given away at the place according to receipts of state treasury (*assignovki*, as M. B. Dovnar-Zapolsky calls them). Later these documents evolved in contracts which included the aim of the lease (the right to collect customs taxes), the amount of the lease and the terms of payment⁶⁶². As a whole, *kvits* can be hardly identified with a *weksel* (akin to the bill of exchange and promissory note), but the use of these written debt documents encouraged the further spread of *weksel* operations.

There are different opinions about the time of the *weksel*'s appearance on the territory of the Polish-Lithuanian Commonwealth. I. G. Tabashnikov noted that the first *weksels* appeared in Poland in XIV century, and in XVI century, they appeared in Russia. In the research of B. D. Lanovik, Z. M. Matisyakevitch and R. M. Mateyko, the XV century was named as a century of the *weksel*'s uprise⁶⁶³. This is cited by I. G. Skomorovich, I. K. Reverchuk and Ya. I. Malik⁶⁶⁴. A. V. Demkovsky believes that the first elements of *weksel* operations existed in XVI century. When the lands of Western Ukraine became involved in *weksel* operations, it coincided with the expansion of bill of exchange operations in neighboring European states⁶⁶⁵. F. F. Butinets attributed the *weksel*'s outspread on the territory of Ukraine to XVII century⁶⁶⁶. The authors

of the *History of Ukrainian Culture* V. S. Aleksandrovich, V. G. Balushok and M. B. Boyanovskaya believe that the development of trade motivated the financial and credit system during XVII century. Promissory notes were used by usurers as a kind of acknowledgement of debt; bearer promissory notes steadily acquired qualities of a payment record. At major fairs, agreements on payment were concluded (often by proxy or by persons having duly certified delegations) as well as credit agreements for crediting trade operations in distant places⁶⁶⁷. F. Brodel noted that *weksels* already existed in XVI century in Eastern Europe, and in XVII century, they augmented in number⁶⁶⁸.

M. Kozinsky dated the appearance of the first debt certificates in Poland to the Middle Ages. According to him, certificates of indebtedness became bearer documents, which are prototypes of promissory notes. The first *weksels* to be used were known to Polish law even before the uprise of local *weksel* ordinations (codes)⁶⁶⁹. M. Kozinsky thinks that *mamrans* can be considered as an example of the first Polish *weksels* actively used not only by Jewish, but also by Polish and Ukrainian merchants.

The specificity of the trade activity of XVI century was the fact that in most cities, Jewish merchants were the major traders who led trade in several cities⁶⁷⁰. Even in 1622, two Scotsmen, William Keat and George Petry, founded a trade company in Tarnow with the authorized capital of 3,200 golden talyars, 4,000 Polish zlotys and 6,000 pounds in form of debt warrants. The company lent money to merchants from Tarnow, Wroclaw and Krakow against *weksels* pledging named *membran*, the rate of interest, called *interessa*, was 7% per annum. In 1626, the company disbanded because of William Keat's dishonesty. The second partner laid an action to Tarnow's court, but he could not retrieve the money stolen by Keat. After this incident, the Jewish began operating with *weksels* in Tarnow; their offices were situated on the street called *Wekslyarskaya*⁶⁷¹.

A *mamran* was filled out on either side; on one side, the principal of loan and payment date were indicated; on the other, there were signatures of a debtor and witnesses. The reason for the conclusion of the agreement, its matter and payment place were not indicated in the *mamran*, which is why it could be presented to cover without acknowledgement. Later, *pustoy* (blank) and *otkrytiy* (public) *mamrans* emerged; they were signed by persons obliged to pay a debt. The creditor wrote the amount of the debt and payment date on the *mamran*.

Evidently, public *mamrans* were used at fairs. As distinct from a simple debt commitment called *shtar*, the use of *mamrans* was not limited to only one operation: when the indicated amount was returned, the *mamran* was not nullified, but re-executed and presented again⁶⁷².

According to the traditional Jewish law, a *mamran* was not valid without signatures of witnesses and the name of a creditor, and formal procedures were necessary to

hand it over to a third party. However, as trading agreements of Jewish merchants were concluded mainly at fairs, where their business partners often came from distant places, it was very difficult to satisfy these requirements. Therefore, by the decision of Jewish communities' leaders, it was authorized to use mamrans to bearer. Mamrans (or letters of credit) were widespread in Poland and Ukraine; among Jewish merchants, they have been out of use since the 1830s⁶⁷³.

Concerning the origin of mamrans and their names, there are many frames of mind. It is believed that documents similar to the *weksel* have arisen even during the Middle Ages in Moorish Spain. At first, they were named *mukatz* (a derivation from *могу кemas ze, motzi ketav ze*, literally "the one who will present this document," a standard expression introducing the text of *mukatz*). In Poland, *mukatz* has gradually turned into *mamran* (*mamram*, *mamrem*). However, it is more reasonable to assume that the term "mamran" is derived from Latin words *memorem*, *memorium*—a memo, or *membranum*, a leather, a parchment, on which these documents were written. Unlike Slovakia and Croatia, where proper names for the *weksel* existed (*zmenka* in the Slovak language, *mjenica* in the Croatian language), *weksel* prototypes in Poland and Ukraine were called mamrans for a long time.

An important condition of the *weksel*'s expansion on Polish-Ukrainian territories was the fact that these lands, unlike Northern Russia, turned out to be under Catholicism's influence. As A. Dolifski pointed out, in the early XX century, Roman Curia's need to transfer church taxes resulted in the use of bills, and thus bills appeared in Poland and Ukraine⁶⁷⁴. I. G. Tabashnikov had a similar opinion, considering that the objective reason for the expansion of promissory notes in Poland during the XIV and XV centuries was the necessity to collect taxes (a tithe, a per capita tax) and transfer them to Pontificum.

Meshko I, king of Poland, sought to the rapprochement with Rome, and put Poland under the protection of the Roman Patriarchy in 985-992. In return for this patronage, Polish kings had to pay an annual tribute to the pontifical treasury, which during the XII and XIII centuries, was replaced by the head tax named St. Petri Denarii. The money collected had to be forwarded to the pontifical treasury⁶⁷⁵.

Even M. Neumann underlined the role of pontifical financial agents who favored the *weksel*'s outspread and money transfer operations improvement. He believed that since it was dangerous to transfer hard cash (especially from provinces under pontificate's authority), it was necessary to find a means to deliver substantial sums without carrying money. When in 1305 the pontifical palace was transferred to Avignon, the allowance for bill of exchange operations considerably increased. In

1325, John XXII levied the above mentioned St. Petri Denarii's tax upon not only Poland, but also neighboring countries, such as Lithuania and Hungary⁶⁷⁶. At the same time, a tithe, which had to be paid by laity and clergyman, was created. The pontifical administration sent its representatives to provinces to collect taxes in hard cash, and then deliver them to the pontifical residence. In countries such as France and the Netherlands, a branched network of Italian merchants existed (who represented banking houses). They were able to carry out operations of money transferring. However, there were less Italian merchants in Poland and Ukraine than in Western Europe. A comparatively low development of commodity-money turnover, as well as a fluctuating political situation in this region restrained the opening of banks and local branches by Italian merchants⁶⁷⁷.

The nearest city to Poland where the offices of the Bardi banking house were situated was Brugge in Flanders, where since 1320, all pontifical taxes were delivered. In 1330, tax agents received a direct order containing the names of merchants and money-changers to be used for tax delivery. In such cases, special documents were to be drawn containing all essential features of a bill of exchange, such as the indication of a sum, payee's name, terms of payment, signature of the person who issued the document as well as the place and time of money delivery⁶⁷⁸. M. Neumann and I.G. Tabashnikov's assumptions of the tithe's role in the uprise of the first weksels in Ukraine during XIV century are plausible.

As a whole, different factors favored the outspread of weksels in Ukraine—the practice of credit operations of Italian merchants from L'vov, the institution of kvit stipulated by the Lithuanian Statute, Ukrainian and Polish fairs in XVI and XVII centuries (where principles of commerce were the same as in Western European countries) and the practice of mamrans' use.

3.4

Debt Obligations in Hetmanate Obligues.

THE NATIONAL LIBERATION War of 1648-1654 laid the foundation of a new period in the history of Ukraine called Hetmanate. Pravoberezhnaya Ukraina (Right-bank Ukraine) remained a part of Poland, and Levoberezhnaya Ukraina (Left-bank Ukraine), Hetmanate, was incorporated with Russia, having preserved a certain autonomy which was gradually limited by the tsar's government until its liquidation in November 1764.

The economic development of Hetmanate in the second half of XVII century was influenced greatly by the active trade carried out with Europe through Gdansk, Krakow and Wroclaw, as well as with Crimea and the Black Sea and Danube regions. Although during the Great Northern War, when the Swedish army occupied the most part of Poland, the volumes of Ukrainian trade decreased, as a whole, the economy expanded during Hetmanate. The colonization of Left-bank Ukraine by natives from Right-bank Ukraine, ruined by a number of wars, was crucial in this process. A spirit of free entrepreneurship flourished in the Left-bank of Ukraine.

The supreme military-administrative institution of hetman's authority was the army office, tracking an observation of follow-up business documentation of various aspects of social and economic life.

Until 1648, the provisions of the Lithuanian Statute of 1588, Magdeburg law, and the Saxon Charter ("Saksonskoe zertsalo") were the basic sources of law on Ukrainian lands, as well as kormchie (church) books and customs-based laws. When some of Ukraine's lands were incorporated to Russia, new forms of law uprose, integrating the

elements of German and Russian law. The basic source of Russian law was "Sobornoe Ulozhenie" (Council Code) of 1649, which defined the civil law.

In commodity-money relations on Ukrainian lands incorporated to Russia, some local specificities of economic activity were preserved in XV century, particularly the West European coins that prevailed in money circulation. Despite the difficult political history of Ukrainian lands and numerous wars during the XVII and XVIII centuries, a merchantability of agriculture and further development of trade, particularly the transit trade, are seen (merchants from Russia and Left-bank Ukraine were going to Western Europe and Balkans through Right-bank Ukraine lands).

In the mid XVII century, there were more than 160 cities and towns in Ukraine, but commodity-money turnover in these cities was not sufficiently developed because of chronic wars and Tatars' attacks. Another reason for impeding the overall economic development and credit activity was the development of the business environment and credit operations in Poland before the merging of Left-bank Ukraine to Russia. There were mainly silver coins of different quality in circulation in Poland (as it was in all European countries of that time). Sterling silver coins were taken to Belgium, as well as to Gdansk, where banking offices melted them with poor quality coins. This deteriorated the value of money and led to speculation with cash. Monetary and commodity markets in Poland fluctuated, which retarded the development of credit operations.

Although in XVII century, the monetary circulation became more active, which is documented by financial documents confirming various deals⁶⁷⁹, the money supply was diverse. Silver coins of different European countries were used, such as kingdoms and duchies of Germany, Sweden, the Netherlands, Italy and Austria. In addition, the overall depreciation of money became more and more crucial, especially because there was a lot of counterfeit money. As a result, noncash credits were required.

The above mentioned circumstances significantly influenced money circulation in Hetmanate. The economic model of Ukraine in Hetmanate times was very similar to the European model. Agreements concluded on individual and contractual bases dominated in Ukrainian economy, which accelerated the process of changing ownership on lands from small owners to large ones and the nascence of large landholdings. In the second half of XVII century, new forms of economic activity spread, including contractual unions and associations. However, Ukraine was falling behind Western Europe, where the natural credit and simple usury reigned.

After a treaty with Russia was signed in 1654, many Russian merchants came to Hetmanate. They were better organized than the Ukrainian merchants because they considered their activity as a profession. Ukrainian

merchants faced plenty of competition. In addition to Russian merchants, Russian soldiers and sectarians traded in Hetmanate (this was not prohibited by the Ukrainian legislation). They were granted a right to trade, equal to peasants, however sectarians were allowed to trade goods that peasants could not trade. Restrictions were put on sectarians regarding issuing weksels and other debt commitments, but trade among sectarians was so widespread that in 1766, the question of how to convert them into merchantry was under consideration. In 1775, they were attributed to *posady* (trading quarters) and granted the same rights as Russian merchants⁶⁸⁰.

Craft-based organization of trade hindered the development of merchantry as a social class. That is why in XVII century, there was no commercial class in Ukraine, and Hetmanate's government had to help the Ukrainian merchantry. It must be taken into account that in the early XVIII century, Peter I took measures for Ukrainian merchandise to pass through Russian ports, though it required time and heavy expenses to transport goods. This trend lasted for a long time. Thus all trade liens of Hetmanate steadily fell under Russia's control, which dissatisfied traditional trade partners of Ukraine, particularly Austria.

It must be admitted that, as a whole, the Ukrainian trade was poorly organized. It was mainly small-scale trade, and serviced provincial markets⁶⁸¹. The raw-materials, such as leather, alcohol, and cattle were exported from Ukraine mainly to Russia; agricultural implements, other metal manufactures, tissues and furs were imported from Russia. Ukrainian merchants prospered from these deals, and some of them (Teterevsky, Kotovich, Ivanov and Zosimych in Kiev, Tomara in Pereyaslav, Shiray in Starodub, Progara in Novgorod-Seversky) developed significant capital. At that time, the trade capital formed during military campaigns, as well as by the exchange; the first capital owners were Cossacks officers, and then Hetmanate's gentry, who in the XVIII century controlled a large-size trading operation⁶⁸².

The main specificity of Hetmanate's market at the end of XVII century was the trading of consumer goods. Due to the hard cash deficit in the end of XVII and throughout the XVIII centuries, the credit activity stagnated; it did not exist in foreign trade at all. As a result, the access of Ukrainian goods to foreign markets was limited.

Thus, a Ukrainian merchant Kandyba, known in the early XVIII century, imported products to Gdansk (Danzig), and although trade liens with this city were established, he did not have credit there. He was forced to buy goods to further trade in Ukraine on the money he received after having sold his own goods.

Fairs were crucial in the Hetmanate's internal trade. Through fairs, Western methods of credit and bill of exchange operations penetrated into Ukraine. At that time, trade operations were carried out in forms known even during ancient Russian times. Cities were the major centers of trade. Crediting at city fairs was as important as at fairs in Western Europe.

As far as fairs in Ukraine are concerned, P. Aleppsky wrote in the mid XVII century: «In the country of Cossacks, fairs have taken place constantly from the beginning to the end of the year; a fair is carried out any day of the year every holiday in this or that city»⁶⁸³. Usually fairs were held at the stated time, and merchants from different parts of Ukraine and other countries gathered to conclude agreements on goods supply, crediting or payment of debts. In every city, trading was held weekly, where agricultural products were exchanged. At least one fair per year was arranged. Five fairs were held in Sambor, four in Zhovkv, Snyatin, Novokonstantinov, Borshev, Kopaygorod, Kasperovtsy; three fairs in Chernigov, Jaroslav, Ternopol, Bar, Zbrov, Fastov and other cities and towns. Zhovkov's fair lasted six weeks, Jaroslav's four weeks, and fairs in Chernigov, Brody, Zhitomir, and Vladimir lasted two weeks. The most famous were fairs in Jaroslav, Peremyshl, Snyatin and Yazlovets, involving merchants from bordering countries.

Fairs quickly increased in number. In Hetmanate, only forty fairs were arranged in 1665, and thirty five in 1722. However, at the end of XVIII century, up to 500 fairs were held in Left-bank Ukraine. Fairs of Hetmanate of XVII century were entirely controlled by foreigners, in particular Greeks, who supervised such trading cities as Starodub and Nezhin. They were intermediaries between the Moscow merchants and Polish Jews, as the latter could not trade directly with Ukraine or Russia.

Famine in the majority of European countries at the end of XVII and the early XVIII centuries provoked a considerable demand for money. The financial crisis overtook all of Europe. In Ukraine, this resulted in an increased price for silver and gold coins due to the deficiency of precious metals. That led to an idea to emit paper money. Though the Ukrainian government minted its own coins since Bogdan Khmelnytsky times, the quantity was limited because of lack of precious metals, and thus resulted in the release of paper money.

In Ukraine, the foreign coins rate was flexible, unlike in Russia, where the government established a fixed rate of thaler, equal to 64 kopecks. During 1651-1702, the thaler's rate varied from 36 to 52 kopeck; during 1733-1775 from 1 ruble 10 copeck to 1 ruble 40 copeck. The situation was complicated because Russian monetary offices in Kiev and Smolensk prohibited exporting gold and silver coins and ingots from Ukraine (especially thalers, which were a payment unit in international trade).

However, precious metals were systematically exported from Ukraine to Moscow, and there were only copper or poor-quality coins in the turnover, which resulted in gambling and money-changers' enrichment⁶⁸⁴.

In XVII century, different forms of transactions were used in trade. Barter was the simplest one. Transactions on preliminary contracts were the most complicated forms of trade organization. At fairs, merchants met to exchange their merchandise for money. The practice of the conclusion of preliminary contracts prevailed, which resulted in the nascence of contracts in Lvov during the mid XVII century, i.e. meetings of major merchants, during which contracts were settled and new contracts were concluded.

Financiers took participation in contracts' activity, which favored the resolution of problems in the money turnover in Ukraine in the mid XVII century. In addition to Western coins that had been in turnover for a long time, the Russian currency began to be used in trade operations after a part of Ukraine was annexed to Russia; the settlement of accounts was done in Russian currency units. The money-changers' activity became more intense, especially at Left-bank Ukraine's fairs, which worried the government. Thus in the *Universe* (1720) of Hetman Skoropadsky, it was proposed to persecute those who «*do not make real deals, but only exchange money, as is common nowadays*»⁶⁸⁵. However, since the export of silver money from Left-bank Ukraine had been prohibited, merchants who crossed Left-bank Ukraine's border were obliged to immediately borrow a lien to pay customs fees. This also promoted the development of credit operations; credits were usually reimbursed on contracts set up under the influence of international practice⁶⁸⁶.

Due to the deficiency of the money supply, money holders did not put their money in circulation, but instead stored them in a reliable place. Money was tight in turnover, so it was difficult to receive a credit for trading operations. Such credits envisaged significant interest, increasing if the recipient of the credit was not reliable⁶⁸⁷.

Monasteries, as well as cities, shops and institutions borrowed willingly at interest. In the mid XVII century, credit operations interest was 7-10 %, sometimes up to 20 % and higher. According to old royal (Polish) laws, it was authorized to withdraw less than 10 % per year. Those taking more were compared with thieves.

It was stipulated in *Prava, po Kotorym Suditsya Malorossiysky Narod (Law Book of Proceedings of Minority Russians)* that the interest is the sum which is withdrawn according to the rights for a loan. The amount taken "over the amount established" was considered as "likhva" (usury), i.e. a usurious interest. In the XVIII century, the Ukrainian government struggled to reduce the "state" interest to 6 %, though later this interest rose to 12 %, influenced by the customs in neighboring Poland. In the times of Hetman D. Apostol, the Ukrainian legislation did not admit an interest exceeding 11 %, however usurers took up to 50 % in their real practices. The outspread of credit operations also influenced the lower social strata in XVIII

century. Peasants had to borrow money; having no opportunity to refund it, they worked to repay it⁶⁸⁸.

In the second half of XVIII century, due to the expansion of trading operations of Ukrainian merchants, long-term low rate loans were in need. Loans of Commercial bank (founded in 1754) at 6 % annual interest could become such loans. However, the bank was created mainly to satisfy the needs of the Russian nobility. The Ukrainian gentry acquired the right to take on credits in this bank in 1783, but only those who possessed estates or trade enterprises in Russia could use the services of Russian banks. Thus for most Ukrainian merchants, this credit was unobtainable. Therefore in 1767, Ukrainian merchants proposed to found lending banks in Hetmanate, in which interest would be withdrawn only for *«the sum lent»* to *«lend money to merchantry on the basis of legal documents, and merchants would bear all responsibility for the money received»*. It was supposed that the interest in such banks would not exceed 8%, although these plans were not implemented.

The circumstances stated above led to the spread of debt documents in Hetmanate, such as sealed receipts, acknowledgements of debt, debt letters, obliks and weksels. Increasing prices for necessities of life in the XVIII century led to a land pledging practice. A written document in a form of «bilet» (a note, a ticket) was used to confirm a deal. In addition, selling on credit was widely practiced; sometimes a written debt obligation was drawn up, called oblik or oblek⁶⁸⁹.

In the XVII century, a sealed receipt did not differ much from administrative letters and orders. This is proven by the head of its letterform *«to all whom this document will be given . . . ,»* but the remark *«kvetantsia»* (a receipt), the usage of the word *«kvituem»* (cf. Kvitavati in the terminology of the Lithuanian Statute) and a stamp classify these sealed receipts as debt documents. A special feature of sealed receipt of that time was a detailed main body of the text, where conditions of the relationship between the bearer and the addressee were set forth in detail, for example:

« September 16, 1751.

Receipt.

According to the decision by the paymaster general, one hundred and thirty five rubles were accepted by the treasury from Maxim Runosvsky, an officer of Military office. This money was recovered from Philippe Kupchinsky on the account of expenses of the commission established to study his denouncement. The remaining money after the commission's work was done was registered as receipts.

This receipt is issued to Kupchinsky to confirm this operation and sealed with the office's stamp.

September 16, 1751.

Paymaster general—Mihailo Skoropadsky

Office's clerk—Nikita Vinder

(the stamp of Lesser Russia's Counselor's office)»⁶⁹⁰

This type of sealed receipt later became more laconic and formalized:

«January 23, 1745.

On the 23 of January 1745, four rubles eighty kopecks were received from Simon Lisogub to Military treasury. This receipt is issued to confirm this operation.

Vasilij Sibersly, a tax collector»⁶⁹¹.

It is evident that the sealed receipt of Hetmanate's times can be considered as a direct extension of the Lithuanian Statute's kvit.

Acknowledgements of debt appeared in Hetmanate in the middle of XVIII century, and they were used to document debt liabilities in life, socio-economic relations and legal proceedings. They were typically drawn up in the following format: «*Me, the undersigned, issued this acknowledgement of debt . . .*» The conditions of debt obligation were then set forth. At the end of the note, there was a signature of the author, as well as signatures of witnesses, if necessary. The example cited below is interesting by having mentioned the oblik (also called oblek or oblique).

«April 21, 1750.

Marina Skorupovna, the wife of deceased Mikhailo Esmontovsky, paid me on his oblik and 15 rubles in addition (55 rubles total). To confirm this, the present receipt was issued.

Anna Esmontovskaya»⁶⁹²

Functions of acknowledgements of debt and sealed receipts were eventually split up. The latter ones were used in case of money liabilities; a remark *kvitantsia* (receipt) was written in the heading; a stamp was obligatory.

Debt letters (a sort of acknowledgement of a debt) similar to weksels were used by S. Shiray from Starodub, a well-known merchant, in XVII century. In XVIII century, these documents spread throughout Hetmanate. The debt letter was a formal act, a written debt obligation confirming an agreement between the parties to keep their interests (the third parties' interests were not taken into account).

The debt letter in Hetmanate was not standardized, but this did not influence its validity. The reason for drawing up the debt agreement was indicated in the debt letter; it was not an abstract obligation. In addition, the formal document itself was second. It was necessary to have a debt obligation witnessed, as well as a consent of the witnesses to take responsibility to pay the debt if necessary (the absence of witnesses' signatures converted a debt letter in a simple written IOU). The payment term was not principal, which was another difference between the debt letter and a promissory note.

Another document which better resembled a weksel was an oblik. The name is likely derived from the Latin *obligatio*, an obligation. An oblik was used to loan

money. Below are examples of obliks written in the first half of XVII century from the Ukrainian Central State Historic Archive in Kiev (TSGIAK):

«This is Karp Shauli's letter to hetmen asking for the issue of a universal (an order) to force his creditors to return his obliks for the money he took from these creditors.

June 4, 1730

№ 652.

«(. . .) according to your universal (order) published in November 1729, which prescribed not to take interest, I completely wiped off my debts. However, my creditors do require me to pay them interest (80 rubles) and did not return obliks signed by me for undefined reasons.

I kindly ask Your Worship to order that my creditors return my obliks and do not try to demand that I pay more interest.

«Bunchukovy tovarish».

Karp Shaula»⁶⁹³.

«August 1, 1744.

We, undersigned, by this oblik announce to everyone it may concern that we borrowed 100 rubles from Ivan Faevsky. The money must be repaid next year, 1745, along with interest (10 rubles and two webs). If by any reason we will not be able to return the debt in time, we ask not to take the case to court and hereby promise to compensate for all losses. In case of our death, Lord forbid, our mother or wives will return our debt without any objections.

Signed with my own hand»⁶⁹⁴.

«To General Military office.

Report.

On August 1, 1744, Novgorodian bourgeois Nikita and Pavel Fedorov (known as the Feshenkos) contracted a debt of 100 rubles from my father, Ioann Maksimovich Faevsky, a priest. According to an ancient custom, to confirm this and of their own will, they issued this document, signed it and promised to return the debt on the 1st August of 1745 with interest (in compliance with the text of oblek). The money was not repaid off in time, although my father reminded them about it several times.

That is why I copied this oblik and ask the General Military office to collect money from the debtors (Pavel Fedorov and Nikita Fedorov. If Pavel dies, collect money from his wife, who would inherit all his property) and return it to me or whomever I will indicate.

February 20, 1757.

*Military officer Fedor Maksimovich,
(signature)»⁶⁹⁵*

To be sure that the money is repaid, it was obligatory in an oblik's text to give the creditor the rights for a certain property of the debtor, and even the right to impound his property. If there was no property collateral of a loan, a guarantee was used, and the oblik had to be signed by several prosperous citizens. Following the traditions of the Polish law, only a person possessing an estate could become a guarantor ; his property's cost must cover the debt.

However, it was difficult for a debtor to prove his creditworthiness. As a result, the property collateral of obliks was inconvenient, and soon more simple forms of security for loans appeared in Ukraine. Real property was immediately granted to a creditor, or after the maturity of the loan. If the debtor did not return his debt, the creditor addressed government representatives who issued *prichinnoe pismo* (a letter in which the reason of non-payment was described). If after that the debt was not returned, *arestnoe pismo* (an order to arrest the debtor) was issued, and the property was transferred to the claimer. In addition, magistrate courts had to hear appeals on disaccord in debt payment terms. Sometimes obliks envisaged a labor-rent or personal dependence of a debtor, which is illustrated by the following example:

«1716.

A. Lizogub took in gage the 8-years-old daughter of a tavern's owner on account of an undischarged debt. The tavern's owner agreed that if he could not return the debt according to the duly signed obligation, he himself (or his wife) must go to work for Mr. Lizogub to settle his debt⁶⁹⁶.»

As a rule, obliks were discharged in the presence of representatives of regiment or sotnya's officers. The payment could be partial, upon which the unpaid amount was re-written. If a foreigner was a party in the oblik, the General Office required the issuer of the oblik to translate the text into the corresponding foreign language. In XVIII century, obliks were widely spread, though they were issued in the amount not exceeding 12 rub. ⁶⁹⁷.

The oblik as a form of a debt obligation existed after the first Weksel Code of the Russian Empire was published, and the following document proves that:

«September 20, 1794.

Me, undersigned, issued this oblik to Grigoriy Karpovich Dolensky, counsellor of state, to confirm that I borrowed forty four rubles until the XX September of the next year (1795) from him. If I am not be able to return my debt of forty four rubles in due time, I promise to return two times more (88 rubles) without any court decision.

In confirmation, I sign

Pavel Zavgorodny, regiment clerk, living in the village Kurene, Borzensky district⁶⁹⁸.

Such forms of credit operations documenting were used in small and large businesses as contracts between merchants, authenticated by signatures and seals of the parties, and merchants books and debt registers. In these operations, as well as in concluding contracts and issuing *weksels* in Ukraine, Russian merchants took participation, which complicated their execution significantly.

The necessity to know the actual legislation of that time and to have experience of conclusion of formal acts caused the uprise of private brokers in the major centers of trade. Later, when Hetmanate was influenced by the Russian Empire's economy and Russian trade legislation spread on the territory of Ukraine, the institution of *partikulyarniy* private brokers gradually disappeared and was replaced by *kazennyye maklery*⁶⁹⁹ (official brokers), who executed credit operations at interest with presuming articles and goods in pledge which were to be passed to the lender if the debt was unpaid.

However, the *oblik* functioned as a *weksel* for Ukrainian merchants (as well as for foreigners traded in Ukraine). It was valid only on the territory of Hetmanate, and Russian merchants did not accept it. Accordingly, the representatives of the Chief Magistrate on the Commission of 1767 proposed to recognize *obliks* as equal to *weksels* by their legal force or to replace them with *weksels*⁷⁰⁰.

After the Russian *Weksel* Code was published in 1729, the *weksel* came to Hetmanate. Here there are two typical examples of Ukrainian *weksels* from the middle of XVIII century:

«Nezhin, October 24, 1748.

Weksel for 112 rubles.

In one year (i.e. in 12 months) from this day (the 24th October of 1748), I must pay 120 rubles by this weksel to Mr. Samoil Fedorovich Pelleponov (or to the person he will indicate) Bill drawer, Chernogov regiment officer Elisey Rashko.

«The city of Starodub

February 12, 1765.

Weksel on 500 rubles.

Counting from the indicated day of this year in one month, I must pay 500 rubles in silver coins on this weksel to Stepan Lashkevich, a territorial magistrate of Pogarsky county (or to the person he will indicate)

Michael Dalbin, the weksel drawer

A makler from Riga»⁷⁰¹

It is obvious that *weksels* were accepted at once as an instrument of commercial credit. This is illustrated by archive documents of the provisions of *Weksel* Code (1729):

«October 21, 1764. № 12592.

By the Grace of God we, Katherine the Great, the Empress and sovereign of all Russia et cetera, et cetera, et cetera.

To our faithful homager (. . .), Count Kirill Grigorievich Razumovsky and to the whole Zaporozhsky army, we send our imperial gracious appeal.

If the Wechsel Code published in 1729 on state wechsel operations had been implemented, a great benefit would have been obtained. The treasury would cut costs to transport the money ; secondly, merchantry could avoid possible dangers by transporting money in cash with them. However, there is no doubt that there is a clear necessity to implement the provisions of the Wechsel Code because delays in the payment of wechsels restrained the spread of wechsel operations.

That is why we order, in case of delays in wechsel payment, to levy all expenses and interests from the persons who caused such a delay, notwithstanding their possible explanations that they did not have enough money to pay. Because in clause 7 of the above mentioned Code, it is said that in case of cash money deficiency, it is necessary to take it from other institutions possessing an appropriate amount.

That is why we hope this order, given to court authorities, will promote the impeccable execution of the Wechsel Code provisions for the persons seeking to avoid danger of money transportation.

*In St.Petersburg,
October 21, 1764⁷⁰²»*

«Following the order of count Kirill Razumovsky, along with the copy of the imperial order to execute the provisions of Wechsel Code.

November 10, 1764.

№ 2054. (. .)

On October 21 of this year, we received from the Senate the order by Her Imperial Majesty about the Wechsel Code, adopted in 1729, and its execution.

I order to send copies of this document from the General office to all regiments of Little Russia, in Zaporozhskaya sech and all courts.

Hetman, count Razumovsky.

October 23, 1764»⁷⁰³

In XVIII century, after the Code of 1729 was adopted, and obliks based on the ancient Ukrainian tradition along with wechsels adopted from Western Europe coexisted in Hetmanate. As the provisions of the Russian legislation of the Council Code were in full force at that time, obliks and wechsels were considered as analogues of debt kabalas in legal consciousness. The following is a document from the archive where the correlation of notions «oblik» and «kabala» are traced back:

«To Fedor Matveevich Voenkov, Governor-General of Kiev of the New Russia province from a state councillor Varopaev, a manager of slobodas (settlements) of sectarians

Report

Following your order and based on claims by Polish gentlemen Yan Pribora and a citizen of the Dobryanka settlement, Mihail Krashennnikov dated from the 10th August of the present year (which I received on the XIX August) an order to force Efim Chizhov, a merchant from Kaluga, and his brothers Peter and Varfolomei Chizhov, Dobryanka citizens, notwithstanding any their disclaimers, to settle their deceased father's debts on «obleks», bought in the city of Korolets, Prussia, by a Polish Jew Yankel Khudominsky.

However, these debts should neither be given to Mihail Krashennnikov, a Dobryanka citizen, nor to Yankel Khudominsky (who has bilked for many years from paying his debt to Krashennnikov). I was ordered to ensure that the Chizhov's would not settle their father's obliks to Yankel without notifying the Volostnoy office until Yankel comes to the office and settles a deal with Krashennnikov.

To execute your order, the above mentioned Efim Chizhov, a merchant from Kaluga, with his brothers, Peter and Varfolomei, were found and delivered to the Volostnoy office to enforce their debt.

However, Efim Chizov presented a report which stated that obliks to be settled are not valid because Chizhov possesses a court testimonial letter from the Königsberg's magistrate (in Prussia), written in German and filled with all necessary signatures with witnesses that Yankel's «obliks» are not effective and these «bond certificates» must be liquidated.

If someone else is going to present other documents about his father's debts, Chizov declares that . . . neither he nor his brothers received some heritage, which may be confirmed by someone of Polish gentry or other Russian merchants who knew his father. The father gave Efim a letter stating that Efim should not pay his father's debts. In addition, according to clause 245 of Chapter 10 of «Council Code» and clause 22 of Chapter 1 of «Weksel Code», Chizhov, along with his brothers, should not pay his father's debts, because «obligation letters» («obleks», «oblegues») are the same as debt kabalas. According to the provisions of Council Code, collecting debts on kabalas is allowed up to a 15 year term, and these «obleks» have more than 30 years.

(. . .)

. . . I inform you about this and am waiting for your orders

September 23, 1770.

State Councilor Prokop Varopaev»⁷⁰⁴.

The term «oblik» in this document is equal to the notions *obligatsia* (bond) and *obligatsionnoe pismo* (letter bond) (compare with *litera obligatore*, a letter of obligation of German merchants of the Hanseatic League). It is further said that the bond certificate

«has only one meaning—kabalas issued for the money borrowed»). Another document from the second half of XVIII century is even more interesting. The following is an example :

«Civil Code, Chapter 10 provides for:

Article 245. If the person signed a kabala (. . .) dies, and his wife and children, or another relatives remain behind him (. . .), they must be found and the debt must be collected from them.

Article 256. If a kabala's term is 15 years, such kabalas may be presented in court, if their term exceeds 15 years, the cases on such kabalas may not be addressed to court.

Chapter 1, clause 22 of the Wechsel Code stipulates the following:

If an issuer or a payee of a wechsel dies before the maturity date, their successors (or other persons to dispose of property of the person deceased) should require the debt payment from successors (внѣ or another person who administers the property of the person deceased). (. . .) If the money was not paid, the wechsel must be protested.

That is why the Wechsel Code is a law to observe. At the same time, «obleks» are based on the Magdeburg law, applicable in Little Russia since the earliest times.

The decisions on wechsel claims should be made only in compliance with the provisions of the Wechsel Code, and the decisions on «obleks» claims—in compliance with the Magdeburg law. The wechsel does not have any advantage over an «oblek», and «obleks» remain in force.»⁷⁰⁵

Comparing the provisions about debt kabalas stipulated in the Council Code, the Wechsel Code of 1729 and common customs to use obliks in Ukraine, the document's author notices that obliks have been used from the earliest times according to the Magdeburg law, and weksels do not have an advantage over obliks.

Since 1734, the Russian government representatives had effectuated the overall governance of the General office, administering its records, in particular for of documents for the whole empire⁷⁰⁶. It also concerned credit documents—written acknowledgements, written IOUs, obliks, and, later, weksels.

In the second half of XVIII century, the notary office was established in Hetmanate to protest weksels. However, merchants were not satisfied with its activity: it handled matters publicly, which resulted in the disclosure of commercial secrets. Hetman K. Razumovsky supported Ukrainian merchants' appeal to close the notary office, addressing a petition to St. Petersburg. His request was satisfied, and the notary office was closed. Some time later, the imperial government ordered to establish a Russian-style notary office in Hetmanate, but it was implemented slowly, as the

merchantry was not satisfied with long-term handling and restrictions put on the property turnover⁷⁰⁷.

As a whole, several types of credit documents were used in Hetmanate, such as kvitantsII, (which likely followed traditions of kvit of the times of Lithuanian Statute), written IOUs, debt letters and obliks. The oblik, traditionally connected with the Magdeburg legislation, can be considered a local prototype of the promissory note.

3.5

Establishing Weksel Circulation in the Russian Empire in XVIII Century.

3.5.1. The background of the spread of weksel operations in the early XVIII century.

ESSENTIAL INNOVATIONS IN credit and weksels operations related to Peter I's reforms because of which foreign capitals actively penetrated in Russia even in the early XVIII century. Expanding their activity on the Russian market, merchants from Western Europe gradually spread the West-European trade customs, including the use of the bills of exchange.

Russia's trade contacts with Western Europe have lasted for a long time. They were effectuated by the overland route through Kiev to Poland and Germany. In the early XVIII century, the West-European trade companies' activity became more active—they set up their branch offices in most regions of the world. The effectiveness of their entrepreneurial activity resulted from the usage of advanced forms of business organization for that time, such as banking credit and bills of exchange operations.

There were a lot of foreign merchants in Russia⁷⁰⁸, and merchants from Western Europe prevailed. Although the first Italian merchants (surozhane) came to Moscow in XIV century, their activity on the territory of the Russian

Empire later decreased, and English and Dutch merchants came to the front of trading activity. To monopolize their trade in Russia, the English merchants paid in advance the sums of all goods that Russian merchants should deliver next year. They themselves sold goods to Russians merchants on credit for 6-12 months. In the course of time, other foreigners trading in Russia began to do the same. If Russian merchants traded fairly, they delivered goods under contracts. However, sometimes they kept foreign goods that had been sold to them on credit, or took the advance payment and then disappeared. However, despite of these accidents, the trade on credit with Russia continued.

The trade with foreign merchants provided for merchandise delivery to Russian ports where the Russian merchants bought it out and resold it domestically. A lot of profit could be gained in such settlements of trade, however, new methods of trade were not widespread. Hence why, unlike foreign merchants, there were few people using *wekssels* in Russia. That was due to Peter the Great's reforms that sending the money via imperial mail became safe, especially after paper money was introduced. The *weksel* was not necessary to receive a credit from foreigners: according to trade customs of that time, deals with foreign merchants provided for a partial advance payment. At the same time, West-European merchants used credit on a broad scale on the Russian market.

In the early XVIII century, neither banks nor credit institutions existed in Russia, in spite of efforts to set them up. Even in the times of tsar Alexei Mikhailovich, A. L. Ordyn-Nashokin believed that Russian trade was undeveloped because Russian merchants could not get enough capital and credit. As a result, he established an institution in Pskov resembling a lending bank, and called it *zemskaya izba* (county house), where people from the trading quarter could enter into partnerships with more prosperous persons to buy Russian merchandise and keep prices for it at a higher level. However, the tsar, influenced by Moscow boyars, who saw an inadmissible innovation in it, prohibited the activity of *zemskaya izba*⁷⁰⁹.

Thus although in XVII century some securities trading was held in Russia, the first innovations in credit operations are connected with Peter I's activity. Having familiarized himself with stock exchanges in London, Amsterdam, Antwerp and Brugge, he decided to set up similar stock exchanges in Russia to create more favorable conditions for foreign merchants' trade activity.

In 1699, Peter I created *Burmisterskaya Palata* in Moscow (a state authority to collect customs taxes), and in some other cities—county houses, a prototype of future merchant banks. In St.-Petersburg in 1703, a special

place was provided in Gostiny Dvor for «trade people meetings.» In 1713, a temporary building of the first Russian stock exchange was built. The spread of credit operations resulted from the development of accounting.

The spread of credit operations in the early XVIII century is shown by the data preserved in books of borrowings of Moscow and St.-Petersburg. There are 1027 credit operations of West-European merchants, and they acted as creditors in 996 of them. Over the course of fifteen years, foreign creditors lent 500 thousand rubles in Moscow. In the early XVIII century, the credit volume was 35-60 thousand rubles annually, 20 thousand in 1724 and 16 thousand in 1725.

During seven years in St-Petersburg, credits in the amount of 200 thousand rubles were registered, in 1722 it was maximum (58 thousand rubles), after that the amount of credit decreased (in 1723 it was 27 thousand, in 1724 it was 11 thousand, in 1725 it was 18 thousand, in 1726 it was 19 thousand and in 1727 it was only 200 rubles; after 1727, credit records ceased to exist in debt books). It was not because of the depression of crediting activity, but the Wechsel Code of 1729 was approaching, in which registering debt obligations (including weksels) in bond offices or other institutions was not stipulated⁷¹⁰.

According to the Russian legislation, it was prohibited to withdraw interests on debts, as it was considered incompatible with Christian ethics («Council Code», Chapter X). To avoid this restriction, creditors indicated in a debt record the amount exceeding the real sum by the amount of interest. As a rule, foreign merchants registered an agreement in bond offices and received from debtors borrowed kabalas signed by guarantors and witnesses. At the same time, foreign merchants used weksels in agreements between them, as well as with West-European partners. In the early XVIII century, foreign merchants were allotted a considerable credit from the tsar's treasury on weksels issued by them to expand their activity.

We first heard of weksels in the early XVII century (although they were likely foreign bills of exchange). They are contained in the Boyars' verdict, dated August 31, 1697, which can be considered as the first Russian legislative act on wechsel transactions, and in the order to a merchant Sergei Labazny «On collecting taxes in Moscow» dated from August 29, 1698. Both documents prohibited the use of weksels in customs tax collecting⁷¹¹. Weksels issued in Russia are mentioned in a decree to superintendent prince Gagarin dated July 9, 1710. The ukaz (decree) prohibited the transfer of money for young people studying abroad because as it was indicated in the decree that too much money transferred was spent to entertain, which did not improve educational achievements⁷¹².

Despite all these prohibitions, *weksels* became more and more common. This is proven by a Senate's decree (1711) prescribing Vice-governor of Arkhangelsk to monitor the *weksel's* rate and report it to Senate. A decree dated May 28, 1728 about setting up «a special fund» in Holland to support the *weksel's* rate was proposed to Russian merchants to contribute to the rising *weksels'* rate, because the fall of the rate causes damages to the state treasury.

Due to the cooperation with foreign merchants, the Russian government transferred considerable amounts of money using *weksels*. In the early XVIII century, the Russian government bore the most considerable foreign expenses for hiring military and technical specialists. Transferring money abroad using *weksels* pursued political objectives. Thus in 1703, G. F. Dolgorukiy, ambassador of Russia in Poland, received 8,000 chervonets for supporting Russia's friends by a *weksel* issued in the name of K. Gutfel, as well as 45,000 Polish guildens by a *weksel* from M. Poppe. In 1711, 200,000 *efimkov* were transferred to maintain the Russian task group in Pomerania, part of which was transferred by *weksels* of West-European merchants who traded with Russia, in particular I. Lubs. A similar operation was effectuated in 1712⁷¹³.

Thus the adoption of *weksel* transaction methods steadily took place in Russia. Witnesses, guarantees, and registrations were not needed to document *weksels* (in comparison with ordinary debt letters). Another advantage of the *weksel* was a laconic content that distinguished it from the traditional form of debt *kabala*, whose text took up more than one page, and all agreement parties, their names, place and social positions were included.

Below is an example of the laconic text of a *weksel* agreement drawn up in the Russian language between a Dutch merchant A. Rozen and G. Grebin from Hamburg:

*"I, the undersigned, having received this document, promise to pay to Hans Grebin in Moscow 25 rubles that I borrowed from him in Arkhagelsk.
January 22, 1721"⁷¹⁴⁸.*

In the early XVIII century, West-European merchants steadily began to apply *weksel* operations while concluding credit agreements with Russian partners. Several cases are known when Russian merchants interchanged *weksels* with foreign merchants through West-European banks. For example, in 1709, a Russian merchant I. Strezhnev lent 2,000 rubles to Englishmen A. Mewrel and C. Delenoy who, in their turn, issued a *weksel* in the same amount to themselves. Money by this *weksel* should be received in Amsterdam, which is why I. Strezhnev settled this *weksel* with P. Kalk-Bermer, his counterpart in Amsterdam. However, in Amsterdam this *weksel* was protested and returned to Moscow. In another case, a merchant P. Barsukov from Ladoga sold on credit to Kh. Lers, a Danish merchant, merchandise in the amount of 6,443 rubles to be further sold in Copenhagen. After having sold goods, Kh. Lers had to transfer the money to P. Barsukov through Lezhen, a Berlin banker, but Barsukov did not receive his money⁷¹⁵.

In the first half of the XVIII century, credit operations between Russian merchants increased. Some of them possessed credit capital of 40-60%, while others traded only on credit capital. The success of commercial activity depended considerably from the opportunity to receive such capital. At the end of XVII and in the early XVIII centuries, a credit could be allotted in the offices of the richest merchants, who had branches in most cities. Although credit operations were not the business purpose of these offices, clerks managing them handled transactions with local merchants, and lent credits to them. G.D.Stroganov's office in Tver was known by its credit transactions. The practice of obtaining credits in cities of Verkhnyaya Volga was different: the profit of municipal offices was given as money to merchants in the form of bills of exchange. Then, these bills of exchange were sent to those state institutions of St.-Petersburg or Moscow that needed money. As a rule, merchants had to refund these bills of exchange in six weeks⁷¹⁶.

The apparition in the 1720s century of *sovetnye pisma* (suggestive letters) became an important step to the implementation of *weksel* circulation. The meaning of these letters was that foreign merchants did not have to register credit operations in bond offices, but received *sovetnye pisma* (they were also called *svoeruchnye zapisi*, i.e. notes written by a merchant's own hand) from Russian merchants, which incurred a liability to refund the duty. These documents were debt letters with an indication of the principal of loan and the term of payment. They can be considered a specific form of Russian *weksels* from the beginning of XVIII century⁷¹⁷.

Because of the risk of a debtor not repaying his debts, foreigners had an opportunity to register these documents in a bond office to have legal grounds for further claims on their debts. At first, *sovetnye pisma* were not of a certain form and resembled ordinary letters that functioned as *weksels*: they were taken as loan payments and could contain commissions to make payments to other persons. In the first quarter of XVIII century, the form of *sovetnye pisma* became simpler, resembling ordinary bills of exchange used by foreigners between them. That can be seen in the following example:

«I wish for Grigory Egorovich to have great health.

This is the letter to confirm that I borrowed 1,250 rubles from Dutch merchants Andrey Timorman and Andrey Finansin, and have to return my debt in early July 1717 in Arkhangelsk, and this is witnessed by my signature⁷¹⁸.»

These *sovetnye pisma* were mainly used in Arkhangelsk, where merchants were preoccupied with their trade and did not have time to register deals in bond offices. A steady transformation (influenced by the credit procedure used by foreigners) is seen of Russian merchants' debt warrants resembling medieval *kabalas* to real *weksels*⁷¹⁹. The formation process of the Russian model *weksel* was terminated in 1729 with the adoption of *Weksel Code*, in which *weksel* samples stipulated in Part III were approximate in form to *svoeruchnye pisma* of Arkhangelsk merchants.

3.5.2. The 1729 Weksel Code and the status of weksel circulation in the Russian Empire in XVIII century

The necessity to adopt the 1729 Weksel Code arose due to the weksel's introduction made by the government, however, in Western Europe, weksel operations occurred at first, and then the exchange law was formed with its regulatory documents codifying the existing practice of weksel circulation.

The reasons for the 1729 Weksel Code's adoption are indicated in its text. In particular, it is pointed out that it is drawn up and published with the assumption that in European countries, money is transferred from one city to another through special letters, called weksels. Weksels are accepted along with hard cash; in case of non-payment, a penalty in the form of interest is imposed.

According to the 1729 Weksel Code, the weksel's advantages are as follows: 1) they allow merchants to avoid expenses on money transferring; 2) they are the most secure method of money transfer; 3) persons trading weksels gain profit; 4) even monarchs, if necessary, receive money from other countries through weksels. As a whole, the weksel's usage was the best commonly accepted way to prevent gold and silver outflow abroad.

In this Weksel Code, the weksel is introduced as a new financial instrument that has never existed in Russia. Obviously, this fact was the reason that the following opinion became widespread: the weksel with its specific character did not appear in Russia independently, but due to trade relationships with foreign merchants⁷²⁰. However, it was mentioned in the Code's preface that money transfer through weksels had already existed in the Russian Empire, though this operation was effectuated differently from other European countries and was less respected. That is why, according to P. P. Citovich, the Code of 1729 became a renaissance and legislative consolidation of the old Russian debt instrument—the debt kabala.

A. M. Osipov believed that the first Weksel Code of the Russian Empire was written in English. Then it was translated into German, which was used for translating the text into Russian⁷²¹. However, it would be incorrect to think that the Code was completely borrowed from the German exchange law. As the exchange law has developed as an international institution, it is fully logical that weksel codes of different countries have much in common⁷²².

S. M. Barats believed that the Code's author was count A. I. Osterman (1686–1747), Peter's II counsellor, who became a member of the Privy Council in 1726, in which he headed the commerce committee. He managed the Russian Empire's post, and organized a public lending bank, as well as a number of enterprises to promote commerce and industry development. Whether A. I. Osterman was the Code of 1729's author or not, this document was adopted on his own initiative as President of Commerce Collegium⁷²³.

According to D. I. Mayer's assumption, the Code was developed by an unknown German professor from Leipzig (Leipzig's Wechsel Code of 1682 was very popular

in Germany) by the order of the Russian government⁷²⁴. The facts in favor of this assumption show that the provisions of the 1729 Weksel Code regarding the circulation of bills of exchange are very close to the stipulations of German exchange law, particularly the notions and all weksel terminology obviously derived from German.

If the Code of 1729 is examined more attentively, it can be noticed that its text is not a simple borrowing from another exchange law of that time because it contains provisions that none of the others do. In particular, part two «About Weksels on Public Money» reglamented the public weksel circulation specific to Russia (by the time of the Code's adoption, weksels as a mean of national money transfer were well-known in Russia). Below is a specific example of «*A Weksel on Public Money*» (part III, example № 13):

«Following the order of His Imperial Majesty, dated March 14, 1729, this first weksel sample is issued by the Moscow office to a Moscow merchant Semen Sidorov confirming that the Moscow office received five hundred rubles from him. The weksel is documented in the record book on the above stated date under number (. . .). In compliance with the provisions of the exchange law, the sum indicated must be paid from the Governor's office in Nizhny Novgorod to Semen Sidorov (or to the person he will indicate).

*Signatures»*⁷²⁵.

Let us study more closely the Code of 1729's content divided on three parts⁷²⁶. The first part «About Real Merchant Weksels» included 39 articles. In weksel circulation, four persons took part: 1) weksel drawer, 2) a person who handed a weksel over, 3) submitter to payment, 4) payee. For certain notes, three persons were admitted (for a traditional bill of exchange) and two persons (for a simple promissory note). The rules of drawing up weksel letters were described in detail per samples (art. 2); persons who can be written in a weksel (art. 3); the procedure of weksel presentation to acceptance (art. 7); corrections in weksels (art. 9); the protest on a weksel (art. 10) and its procedure (art. 15); inland Russian weksels (art. 28); court claims on weksel cases (art. 29), etc.

The second part, «About Weksels on Public Money,» contained 15 articles. It was supposed that public weksels could be of two types: 1) issued by private persons to state bodies, 2) issued by state bodies to private persons. In both cases, these weksels were used to transfer national money.

If public money was given to a merchant for transferring, he issued a weksel in three duplicates, indicating the exact payment term and presented a surety. The state body delivered weksels of that kind to the head of the institution to which the money transfer was effectuated. Having received the

weksel, it had to be passed to a person (drawee), in the name of whom it was issued for written acceptance and further payment in a seven day term. If the acceptance was denied, the drawee had to hand in a written application delivered to a place of weksel issuance to withdraw a correspondent sum from the weksel drawer and guarantors. Apart from the weksel's sum, the penalty's interest was withdrawn in case the acceptor refused to refund the money on the term indicated, or if neither the weksel drawer nor a guarantor were able to repay the money.

The second type of state weksel was used to transfer merchants' private capital by the instrumentality of state bodies. These bodies could bear the responsibility to transfer correspondent sums only if the institutions to which the money was transferred had cash. After receiving the money from a merchant, a state weksel was issued for him, valuing to another state body that was in charge to put out an amount indicated in the weksel to the holder or another person (being bidden) within a week after the weksel was presented. If the person to whom the weksel was valued to rejected it without a protest (or having accepted, he refused to settle it), such cases had to be drawn up with the aid of a notary in the presence of two or three witnesses. The person who refused to settle the weksel had to pay a penalty equal to 8 % of the weksel's sum from his own funds, whilst the weksel's sum was reimbursed from state funds. However, state weksels (especially of the first type) eventually ceased to be used, because of the high risk of transferring state funds through merchants who were frequently financially insolvent, together with their guarantors⁷²⁷.

In part III, inland weksel forms and samples were presented with some explications. Weksel execution forms had to be taken as a basis for weksel circulation implementing. Herewith the Code of 1729 regulated the usage of bills of exchange, describing in detail its circulation specificities that were out of relation to weksel operations in Russia. Four people who could participate in a weksel obligation were indicated in the samples of weksels:

- 1) drawer—a person issued the weksel in another city or country according to the agreement with a remittor, i.e. a person who will transfer the weksel;
- 2) drawee—a person who delivers money to a drawer and accepts the weksel;
- 3) presenter—a person to whom the weksel is delivered so that this person could receive money from the note;
- 4) acceptor—a person who accepted the weksel and signed it as a consent to pay it.

Hereafter, it was said in the Code's text, the number of parties of weksel agreements could be no less than four. In sample № 4, the

weksel's blank of three parties was presented. In sample № 5, only two persons were mentioned, i.e. it was a promissory note, so this is the sole passage in the Code of 1729 where a promissory note is mentioned, with the exception of art. 3 of part I in which it is written that the number of parties of a weksel obligation could be less than four. Thus it may be concluded that in the Code, the weksel with four participants was taken as an example, an archaic one, outdated by the 1729 fair weksel type.

The entire first part of the Code of 1729 was dedicated only to the bill of exchange less-common in XVIII century as well as in the XIX century in the Russian Empire, where a promissory note was used in the overwhelming majority of cases. In addition, the nebulousness of the description of specificities of bills of exchange, the congestion of the text with German terminology which was not widespread in Russia at that time and did not acquire the unified terminology of exchange law, as well as the absence of the definition and the description of the promissory note's specificities made the Code of 1729 unvital.

The Code was important because it admitted the identity of the promissory note's capacity of population to pay weksels with its legal capacity. Art. 38 of part I stipulates that. Even though the Code is drawn up mainly for merchantry, its rules spread to military men and all other civilians (*«not only merchants, but also other persons assuming obligations such as weksels»*).

In addition, the Code of 1729 aimed to determine the legal way of a debt document duly documented and for which no confirmation of witnesses is needed. All substantial and circumstantial characteristics of weksels were indicated (art. 2, 3, 5); an undebatable status was granted to the weksel, all inscriptions made on it were not obliged to be certified by witnesses (art. 1). Terms of weksel obligations were also determined (art. 4), the procedure of weksel counterparts issuing was described (art. 5), the procedure of acceptance (art. 7, 17), the procedure of endorsement (art. 8, 19, 37) and payment terms (art. 11). Procedures of protesting in case of weksel rejection (art. 18) and non-payment (art. 4) were described, as well as the recourse without the choosing of a person in charge (art. 19, 30). Regarding issuance of weksels, the Code stipulated the necessity to execute the weksel in the form of sample (a blank-form) attached to part III. In the Code, articles on value, weksel types, validity of weksels, advice notes, acceptance, endorsement, ways of payment, forgery, etc. were included. It was recommended to issue weksels in the presence of chartered brokers, which is why the Code did not contain substantial limitations of the right to issue weksels.

According to the Code's provisions, the promissory note was equal to the bill of exchange, however, the Code was largely focused on the bill of exchange's circulation. Thus the West-European-type bill of exchange being transferred to the Russian Empire

(where there were different economic conditions that favored its emergence in Italy and its spread at fairs in France) acquired another meaning. The most important specificity of *weksels* in Russia was that it represented a written debt obligation, very close to a debt letter in substance, mainly differentiated by its name. Russian holders were attracted by the quickness and the severity of debt collection under *weksel*. The severity implied not only on the debtor's property, but also on the debtor himself. This factor was similar to traditions of debt *kabala*, which had been widely used in Russia for a long time. That is why the *weksel* became a formal debt document in the Russian Empire. That resulted in the possibility to apply severe legal stipulations of exchange law to a debtor. The circumstances mentioned above, as well as the need for a European-type debt document resulted in the emergence of the promissory note in Russia. Thus during the Russian period of the history of the *weksel*, it changed its functions so much that it completely lost its primordial associations with the bill of exchange. Since the Code of 1729, the *weksel* became available for all, evolving into a means of personal credit and serving as a debt letter, legally approved by the exchange law's stipulations.

However, according to D. I. Mayer, despite the implementation of the exchange law on a legal basis, the quickness and severity of debt collection inherent to the exchange law failed to be implemented in Russia. According to the Code of 1729's provisions, personal detainment of the *weksel*'s debtor was admitted, and while the debt was collected, a distress had to be levied on his property to be sold in a short period of time. These provisions were not always fulfilled in reality, because the majority was not aware of the difference between the *weksel* and other debt documents (this resulted in calling any debt act a *weksel* ; even in official documents, an debt letter was frequently named a *weksel*).

The reasons for heightened diligence and strict procedures in Code of 1729, as well as in subsequent documents, were determined by the fact that the exchange law of the Russian Empire was borrowed, it did not occur as a consequence of historical development, as it has been in Western Europe, but was imported. Thus, the essence of bill of exchange legislation in Western Europe internalized in bill holders' consciousness. In the Russian Empire, however, the *weksel*'s severity was implemented «by order» and enforcement. Due to the foreign nature of the *weksel* concept, even the representatives of the Russian Executive Branch were hard pressed to distinguish bills of exchange and other forms of debt instruments⁷²⁸. Another specificity of the Code of 1729 was the determination of the rules of state *weksels* circulation⁷²⁹, which were included neither in the Code of 1832, nor in subsequent laws.

Subsequently, during the XVIII century, matters of the *weksel*'s legal capacity attracted the attention of the government, which attempted to limit the identity of *weksel* capacity with civil legal capacity promulgated in the Code of 1729. It was relatively simple to persecute the severity of the legally approved *weksel* legislation, and the attempts to limit the *weksel* capacity were made. In particular, an edict from June 14, 1740 limited the number of persons with the right to issue *weksels* to merchants and

craftsmen. Several regulations regarding restrictions of peasants' rights were published; for example, an edict of Empress Catherine the Great «About Weksels for Peasants,» published in 1761, according to which the weksel capacity did not cover peasants. The restrictions tried to revoke the protection for peasants in the Code of 1729: being unaware of weksel's essence, peasants became victims of usurers, whilst the weksel, which replaced the debt kabala institution, turned out to be a mean of turning free peasants to serfs⁷³⁰. Later, these restrictions spread to the nobility, because smashups of noblemen became more frequent due to growing indebtedness on weksels. Thus the weksel became affordable only by merchantry.

In the Russian Empire of XVIII century, the weksel kept its similarity with an acknowledgement of debt; the main difference between them was that the acknowledgement of debt had to be notarized by a broker, and established a fee to be paid. For weksels, this notarization as well as the payment of taxes was not obligatory. It was considered that the weksel's main advantage over acknowledgement of debt was that it was not necessary to pay taxes for it. In addition, as D. I. Mayer points out, weksels were issued on the same stamped paper as acknowledgements of debt. The essence of these two documents was very similar. The weksel's main advantage was that it was possible making a credit deal any time, in any place⁷³¹. Despite the restrictions and simplified comprehension of the weksel's essence, in XVIII century, the weksel circulation steadily spread throughout the territory of the Russian Empire, being closely welded to credit operations.

The decree established noble lending banks in Moscow and St.-Petersburg, as well as the Merchant bank («*The Managing Bank of Commerce and Merchantry at St.-Petersburg's Sea Port*»), founded on May 13, 1754, under the reign of Empress Yelizaveta Petrovna. Noble banks lent 6% annual loans on security of precious metals; a lands pledge was also permitted. At first, only Russian nobles had the right to borrow from these banks; however, this right was expanded to the nobility of Bielo-Russia in 1766 and of Ukraine in 1783. Banks' capital stocks increased: initially, it was 750 thousand rubles; it increased to 6 mln. rubles under Catherine the Great's reign. The Merchant bank allowed loans on the security of goods of Russian merchants traded at St.-Petersburg's sea port for the same rate of 6% annually. These loans were secured by weksels⁷³².

As a whole, the Merchant bank's activity fell short of expectation. During the first years of the Merchant bank and the Noble bank, government capitals were given to a limited number of persons who preserved them. The decree of Emperor Pavel III from June 26, 1762 pointed out the unsatisfactory situations in the Noble bank and Merchant bank. In 1770, the Merchant bank stopped crediting. In 1782, the bank was closed and its funds were transferred to the Noble bank. However, landlords did not return loans to noble banks in due time and they also did not pay interest; sales of pledge stipulated by

law were not effectuated in practice. The accounting was unsatisfactory as well. Hence why in 1785, noble banks were also closed; all their capitals and records were transferred to the newly created Lending bank.

By the initiative of foreign entrepreneurs, as well as to facilitate copper money circulation, a decree of Empress Yelizaveta Petrovna «About Measures of Weksel Circulation» was published on November 6, 1757. It stipulated the use of weksels between St.-Petersburg and fifty major cities in the Russian Empire. People wanting to transfer money could receive their money in fifty cities' municipalities, between which 2 mln. copper rubles were distributed. Loans were allowed against pledged weksels for a term of eight months at the monthly interest rate of 0.5%; these transactions were allowed to be effectuated in St.-Petersburg⁷³³.

Half a year later, the weksel using remittance proved its high effectiveness, by compte P. I. Shuvalov's initiative, was issued a decree (on June 21, 1758) aimed at expanding this operation and creating individual banks in St.-Petersburg and Moscow named «Banking-houses to issue weksels for copper money circulating» (more known as «Copper banks»)⁷³⁴. These banks contacted with the institutions which transferred money and gathered a precise information about the amount and number of transfers. In addition to that, they took deposits from private persons, crediting such deposits to separate accounts (records were kept in the main bank book)⁷³⁵.

The Copper bank's activity can be considered more progressive compared to the merchant bank's operations, especially regarding the opening of current accounts. Among week points of Copper bank's activity were the time spent to receive money, obligatory formal procedures and weksels issued not to the bearer. The last one embarrassed weksel transfer; the most uncomfortable condition was the necessity to request filing an anticipatory (in a year-term) application to return the weksel⁷³⁶.

The situation changed under Catherine the Great's reign, when securities markets and private banking entrepreneurship emerged⁷³⁷. Translated books on accounting and commercial activity were published, such as *Trade in Amsterdam* (1762), *Key to Commerce* (1783) and *Instructions Necessary for Russian Merchants* (1788)⁷³⁸.

In 1767, a special committee to amend «The Council Code» of 1649, the basis of Russian law of XVII and XVIII centuries, was assembled (similar commissions were assembled under Peter the Great, Peter II, Yelizaveta Petrovna in 1754; the committee of 1767 worked until 1769)⁷³⁹. The committee discovered that the main reason for the low weksel rate was a shortage of crediting, and decided to establish some merchant banks to help solve the problem. It was proposed to allot two million rubles to set up such banks in Moscow and in St.-Petersburg, as well as in guberniyas and provinces, where merchants could take money on credit for five years. Another project suggested setting up such banks only in Moscow and St.-Petersburg, but with a considerably larger capital of twelve million rubles. Some members proposed to limit lending operations from the Lending bank, established in 1786 and allotted credits on the security of goods⁷⁴⁰.

A draft of the *Weksel Code* was proposed to the commission, however the commission's members had conflicting opinions. The *Code of 1729* declared the *weksel* an undisputable abstract obligation; signatures in the *weksel's* text required no further exemplification. Members of the 1767 commission sought to modify this peculiar *weksel* specificity. Thus a member from the city of Uglich proposed to certify every *weksel* by a public notary. A member from the nobility of Karkov proposed to issue *weksels* in regional offices and other governmental institutions, and to register them in records books. A Kashin nobility representative not only supported the requirement to draw up the *weksel* in the presence of a notary, but also proposed for notaries to present a daily report about *weksels* issued to the governmental bank office. A member from the nobility of Dankovsky district, having analyzed the *Weksel Code* in detail, expressed his proposals regarding *weksel* protest, recovery etc., proposing to make *weksels* trustworthy by presenting them in district or regimental offices.

Although the commission of 1767 discussed the use of *weksels* by the nobility rather than the merchantry, members sought to make the issuance of *weksels* more complicated and limit *weksel* circulation. This proves that in the second half of XVIII century, the *weksel* was not widely used in credit operations⁷⁴¹.

By Catherine the Great's initiative, assignment banks emerged, which were issuers of the first paper assignments in Russia, as well as a number of different credit institutions such as *Sokhrannaya kazna* (Deposit Treasury), *Ssudnaya kazna* (Loan Treasury) and *Prikaz obshestvennogo prizreniya* (Public care office). Their main goal was to lend credits only to the nobility. In 1772, Deposit and Loan treasuries were opened in Moscow and St.-Petersburg which loaned money at interest for any term and loaned on the security of immovables. Public care offices, established on November 17, 1775 in every guberniya's capital, received contributions (apart from charity) and loaned on the security of the guberniya's land property⁷⁴².

The State lending bank was established in 1786, to which assets of former noble banks were transferred. Twenty two million rubles were transferred from assignment banks to credit the nobility, and eleven million rubles for crediting some cities.

This decree established insurance offices in the Assignment bank, as well as separate offices for *weksels* and goods. As a whole, during Catherine the Great's reign, commercial credit and *weksel* operations developed very slowly in Russia. The main reason for this situation was the undeveloped backgrounds of securities trading and *weksel* operations in Russia's economy. The activity of St.-Petersburg's stock-exchange remained the same. It stayed on the exchange of commodity goods, and deals on *weksel* sales were episodic there.

Weksel operations slowly spread throughout Russia due to the rapid growth of debts of honor of the nobility, as well as a great quantity of bankruptcy among noblemen attracted by weksels because they trusted their debtors and weksel agreements (which is unusual to Russia, where the practice of credit on the collateral basis was common). Contemporaries testify that in the second half of XVIII century (during Catherine the Great's reign), a custom «to live in debt» was common among noblemen. It was believed that true noble behavior involved bravery⁷⁴³. That resulted in debts through weksels at heavy interest, lands and estate pledging. As a result, a great number of nobility went bankrupt.

In this respect, the weksel's reputation became so bad in Russia that merchants began to refuse to take weksels as payments for their goods, even if these weksels were issued in the name of well-known merchants. Another reason for the distrust of weksels in Russia was that courts were not serious about protesting weksels, as the majority of gambling debts were documented by weksels. According to Bayer du Ollan's observation⁷⁴⁴ (he wrote in his diary during his journey to Russia in 1784), lack of certainty that weksels would be paid was quite common in the late XVIII century. According to the French traveler, one of Peter I's laws favored the latter. The law protected a debtor's family. If one's father was alive, his son did not have any proprietary right; if the father seized his son's property, a creditor could not demand payment from the son.

Another circumstance must be taken into account—the Russian currency was constantly in depression; to support it, the government had to spend 500–600 thousand rubles, buying up a lot of weksels through agent bankers, and selling them later with considerable losses. In this respect, Bayer du Ollan noted that Russia was far from the countries with developed trade, and it had specific customs that resulted in the loss of the confidence of West-European partners in XVIII century; a considerable amount of time would be required to restore credibility⁷⁴⁵.

As a whole, considering weksel operations of XVIII century, one may agree with B. M. Cheskidov's opinion that in Russia, as well as in other countries where feudalism prevailed, mortgage operations with noblemen's lands and weksel operations (with weksels of merchants from major cities) were unique, profitable credit operations. In addition, the specificity of XVIII century was the deficiency of personal initiative in banking. The first credit and banking institutions in the Russian Empire were created by the state for reasons of policy. As a result, the state not only tended to gain profit from credit institutions and the implementation of weksel operations, but was also ready in advance to bear losses. There were no real commercial purposes, and this situation could not attract private investors⁷⁴⁶.

The Ukrainian lands which were part of the Russian Empire in XVIII century, Peter I's monetary reform and further economic policy of Russian government, commodity-money and credit relations became more and more influenced by the economic situation in Russia. Three territorial partitions of Poland (in 1773, 1793 and 1795) were conducive to this, after the restructuring the State of Poland lost its political power, and Russia's influence spread over the greater part of Ukraine. Merchants from Russia and Left-Bank Ukraine imported goods through Polish lands of Right-Bank Ukraine to Western Europe and the Balkans. Despite the tangled political history and wars on Ukrainian lands in XVII and XVIII centuries, the merchantability of the agricultural sector increased and the trade developed.

3.6

Weksel Operations in the First Half of the XIX Century (Until 1861)

DESPITE THE EXPERIENCE of *weksel* usage acquired in Russia during XVIII century, in the early XIX century, credit and *weksel* operations were still underdeveloped. The underdevelopment of intercommunications, post and transport routes frequently limited them to a separate city or a small district. The reason for this situation was that the main condition of *weksel* circulation (as well as credit operations) was civil rights security and keeping earned profits. Socio-economic backgrounds and a confident atmosphere may emerge only under such circumstances. The development of credit relations, and especially *weksel* operations, are impossible without them.

In the early XIX century, the volume of credit operations increased. That resulted from the further trade development and the enrichment of major merchants, as well as the increase of joint indebtedness of nobility⁷⁴⁷. When the Managing Bank of Commerce and Merchantry at St.-Petersburg's Sea Port was liquidated in 1782, the paper value and *weksel* rates decreased, which is why it was necessary to create a new commercial bank.

The first step was the establishment of the Accountable (Discount) office and the Insurance office at the State Assignment Bank on October 18, 1797. The Discount office's duties, stipulated by its charter, were merchants crediting on *weksels* and the security of goods. As distinct from the merchant bank which lent money only on the security of goods, the Discount office discounted *weksels*.

The weksel discounting period was limited to nine months, the interest was 1/2 copeck from 1 ruble per month. It was said in the Discount office's charter: *«The Discount office is established to help Russian merchants to carry out trade operations . . . loans are distributed on weksels issued to merchants by their buyers . . . »*⁷⁴⁸.

In 1798, the Special office for external transactions, payments and commissions was established along with the Discount office. The Special office is better known under the name of the Office of Court Bankers, the bankers who received an exclusive right to effectuate all operations of money abroad (by the state's orders). It was only through this office that purchases of foreign goods could be effectuated. The title of court banker was granted to the richest merchants who attended to the government's needs and had ties with foreign banks due to credit operations. The main goals of these merchants were to maintain a high rate of Russian weksels in foreign banks⁷⁴⁹.

The major centers of credit and weksel operations on the territory of the Russian Empire in the early XIX century were St.-Petersburg and Moscow, the Black Sea region (Odessa), Poland (Warsaw), Western guberniyas (Vylna, Berdichev) and Baltics (Rīga). The specificities of foreign and domestic trade and commodity-money circulation determined a specificity of credit and weksel operations.

In XVIII century, the major part of the Russian Empire's foreign trade was effectuated through the sea (the total volume of land trade was only 6%). In the early XIX century, exports increased to 12%, the imports—up to 22%; in the middle of XIX century, the export of goods via land attained 27%, the import—37%. The land trade attained a considerable volume of trade only in the late XIX and XX centuries due to the railway system's construction⁷⁵⁰. In XVIII century, the sea trade was effectuated only through the Baltic sea. The Black Sea trade ways were not used at that time because they were under Turkey's control. In the late XVIII century, the situation changed: Turkey's decline opened an access through the Black Sea to the Russian Empire. As F. Brodel noted, Russia's access to the Black Sea and the discovery of the Straits of Dardanelles and Bosphorus in 1774 favored the ships of Venetian, French and Russian merchants, which considerably undermined Turkey's prestige.

Since the late XVIII century, Southern Ukraine proactive inhabitation began. The government gave away land plots to landlords and foreign settlers there. A profitable geographic position and available natural resources motivated a fast economic development of the territory⁷⁵¹. However, when in 1784 merchants from Marcel desired to trade with Crimea through the Black Sea, one of them noted that only copper money was in circulation. Paper currency was not used due to the lack of discounting facilities. According to F. Brodel, in the 1780s, it was hard to imagine that

someone would try to organize *weksel* discounting in Kherson⁷⁵². The time came for Ukraine to begin exporting its grain via the Black Sea. Only in the early XIX century Russia began the large-scale wheat export by these new trade ways, which became one of the most important events in European economic history (although it is not frequently mentioned)⁷⁵³.

One of the economic and politic reasons for the fast development of wheat trade in the second half of XVIII century was the decline of bread and other goods' export through Gdansk, the main Baltic seaport⁷⁵⁴. At the same time, the Black Sea region became more and more involved in foreign economic relationships with the Russian Empire. The availability of great amount of marketable cereals on the Ukrainian lands (as well the increased demand for it in 1816-1817, when Western Europe suffered from famine) favored the fast export growth through the Black Sea and the Azov Sea ports⁷⁵⁵, as well as an active economic development of the Black Sea region. The city of Odessa founded in 1794, became one of the most prosperous centers of financial and credit operations.

Although in the early XIX century, 85% of imports and 91% of exports were carried through the Baltic sea. The Black Sea ports were also important, to which some privileges had been granted even in 1782 (in particular, custom taxes had been diminished at 25%). The sea port of Odessa had major advantages: in 1804 it was permitted to transport goods to Moldavia, Austria and Prussia. In 1817, Odessa also got the the right to ship goods *porto-franco*, i.e. tax free import-export of goods, which promoted the fast development of banking houses. Thus in 1802, it imported foreign goods in the amount of 719,000 rubles, and 14,766,000 rubles in 1860⁷⁵⁶. Odessa became a storage location of foreign merchandise to be further exported not only to Russia, but also to Poland, Austria and Persia. All these factors favored the fast capital influx to the city and the enrichment of Odessa's merchants.

The bank and credit activity has been effectuated in the city since its foundation. Italian and Greek merchants controlled it, but in the early XIX century, due to the development of the grain trade, Odessa became the financial and credit market for all the Black and Azov Sea ports. Major banking houses uprose in Odessa, and their spheres of influence quickly spread throughout the entire the Black Sea and Azov Sea regions.

Odessa's banking houses of M. Efrussi and D. Rafalovich played a significant role in the city's development. M. Efrussi's banking house had a number of offices abroad, as well as branches in Paris and Vienna which

carried out a high volume of foreign financial transactions. D. Rafalovich's banking house was opened in Odessa in 1833. It flourished in the 1860s, when the volume of its financial transactions reached fifty million rubles. It kept not only sound business contacts with London, Paris and St.-Petersburg, but also promoted the development of numerous companies with its credits in Odessa and the Black Sea region⁷⁵⁷.

In the early XIX century, domestic trade in the Russian Empire was carried out mainly at fairs. In Left-Bank Ukraine in 1789, about 400 fairs were opened. In the first half of XIX century, there were more than 2,000. The total volume of trade operations at fairs reached several million rubles,⁷⁵⁸ which favored the formation of a class of professional entrepreneurs and merchants. As a result, the total number of merchants in Ukraine increased between 1816-1856 from 18,200 to 104,000 major merchants with concentrated capital in their possession⁷⁵⁹.

The total trade volume growth in the early XIX century led to the spread of commercial credit and the emergence of new credit institutions. The Russian government's policy favored arranging money circulation, in particular M. Speransky's activity, financial reforms adherent who was appointed Director of the Department of the Ministry of Home Affairs in 1803.

In 1806, in the Discount office's branches were set up in Moscow, Arkhangelsk, Odessa, Feodossiya and Taganrog. However, although in the early XIX century a system of state credit was created in the Russian Empire, private credit was underdeveloped. During the wars with Napoleon, crediting was in stagnation until 1817, when the Discount office was converted into the State Commercial Bank created by the Assignating bank with capital funds of 30,000,000 rubles⁷⁶⁰.

The Tsar's edict dated May 7, 1817 about the bank's opening on January 1, 1818 declared that it aimed to help merchantry, because the responsible offices were not effective enough due to insufficient capital. Between 1818 and 1821, the Commercial bank set up six branch offices in different cities, but soon four were closed due to the «lack of necessity.» Later branch offices in Kiev (1839), Kharkov (1843) and Poltava (1852) joined the offices in Moscow and Odessa.

The bank mainly credited trade and lent on the security of goods and wekselfs. It was accepted wekselfs from Russian citizens and foreigners who dealt with trade, banking or were owners of plants, factories and trade companies. A weksel drawer or one of weksel signees had to be a Russian citizen, and at least one of the weksel's parties had to permanently reside in St.-Petersburg. Promissory notes and valued notes were accepted to discount for a period not exceeding six months⁷⁶¹. The volume of commercial bank operations, particularly weksel discounts during the first years, is presented in the table 3.6.1.

Table 3.6.1.

Deposits, amounts and weksels discounted by
the Commercial Bank in 1818–1825 (in millions of rubles).⁷⁶²

Year	Annual deposit	Weksels discounted
1818	2.9	10.9
1819	11.4	20.9
1820	17.1	28.3
1821	10.7	46.3
1822	13.3	29.8
1823	19.2	27.2
1824	24.3	27.9
1825	28.0	34.2

Due to the Commercial Bank's activity, loan interest were reduced from 12–15% to 7–8% at the Exchanges in St.-Petersburg and Moscow, though the bank only valued weksels from major merchants who had a monopoly on low-interest credits.⁷⁶³

Any merchants' proposals to perfect crediting procedures were rejected. In 1830, in response to merchants' appeal, the Director of Odessa's branch of the bank refused to extend the period of weksel discounting from four to six months, stating that the State Bank should not credit private persons. Other proposals were rejected as well, such as the proposal to extend operations with foreign bills of exchange. During the next decades, the bank accumulated a great amount of deposits (table 3.6.2.). However, it could not loan them profitably, and the state treasury used these funds to satisfy its needs.

Table 3.6.2.

Commercial bank credit volume, mln. rubles.⁷⁶⁴

Year	Weksels discounted	Loans lent against weksel pledging
1823–1827	157.8	6.5
1828–1832	75.6	4.6
1833–1837	48.2	3.7
1838–1842	54.9	3.6
1843–1847	64.0	3.3
1848–1852	106.4	2.9
1853–1857	105.4	8.2
1858–1859	74.5	6.8

As a whole, the state crediting procedure did not fructify in the first half of XIX century. The conservative policy of the Minister of Finance, Count E. Kankrin (he held a post of Minister during 1823-1844) was one of the reasons for this situation. Born in Germany, he saw Russia as a barbarous and desperately hindward country. He denied any attempts to innovate credit operations and economic reforming. He showed a special disinclination for private bankers, believing that the government should not allow the existence of private banks emitting credit papers because it was impossible to control their activity.

Thus only official banks established by the government had the right to operate⁷⁶⁵. According to E. Kankrin's, private banks were not only unnecessary, but destructive. That is why he restricted lending to private persons, and maximally abridged the credit and banking activity. His policy led to placing all ready assets at State Banks, which could not invest them. As a result, the *weksel* operations volume decreased more than three times during 1826-1840⁷⁶⁶.

Taking into consideration all these facts, it became obvious why the merchantry preferred hard cash settlements. In the first half of XIX century, merchants in Russia thought it was scornful to approach commercial banks for credit. Some of them bought goods against *weksel* pledging, and made a condition not to discount the *weksel* in a bank. In addition, banks lent only against Russian goods, and limited foreign *weksel* discounting, even to the most reliable sources. Credit and *weksel* operations were concentrated in capital ; small merchants' *weksels* or *weksels* issued on petty cash were refused. All these factors discouraged the development of *weksel* operations. Another reason why state credit institutions did not discount small merchants' *weksels* was because personal contacts as well as a banker's awareness of commercial deals of persons taking credits⁷⁶⁷ were necessary not only in Russia, but also in most countries.

Apart from state credit institutions, in the first half of XIX century, credit and *weksel* operations were carried out by private banking houses, extending their activity by crediting the trade and industrial enterprises. A sound role in the development of credit operations not only set prices for the most important goods in Moscow and at Nizhniy Novgorod's fair, but influenced trade operations in Irkutsk, Bukhara and Khiva.

In 1818, the first banking house Junker and Co. emerged in Moscow, as well as the houses of Tomson, Rul and Miller, although the total volume of their credit operations was insignificant⁷⁶⁸. Eventually, major businessmen and entrepreneurs established such well-known banking houses as F. A. Alferov, Ryabushinskies Brothers, Zakhriy Zhdanov and others. Although their total volume of credit operations was less than those of big joint stock banks, their advantage was that they operate and transfer funds more quickly. As a result, the banking houses' activity steadily expanded to the external financial market.

In the early XIX century, credit institutions of Poland, particularly the Bank of Poland, which was established in 1828 in Warsaw by the order of tsar Nikolay I, became very powerful.

The Bank of Poland was created despite E. Kankrin's stonewall. In 1830, the President of the Bank of Poland approached the Commercial Bank with a proposal to cooperate, which was refused. He addressed E. Kankrin personally, proposing to establish business contacts between two banks and convert the Bank of Poland into the Commercial Bank's contractor, but the Minister of Finance was against it⁷⁶⁹. As the Bank of Poland bound itself with a liability to pay off the public debt of Poland, it was granted the right to receive deposits from the government, institutions and private persons, as well as the right to buy and sell securities, discount *weksels* and issue bank notes in the amount not exceeding the bank's physical assets.

The total level of economic development of Poland was higher than that of Russia. At first, the Bank acted dynamically: deposits in the amount of 150,000,000 zlotys were attracted. The revolt of 1831 in Poland negatively influenced the bank's activity. Although it successfully continued its operations, it was converted into a branch of the State Bank in 1869. The Bank of Poland lost most of its rights, including the right to open credits against *weksels* on the security of mortgage⁷⁷⁰.

Despite of the fact that the Bank of Poland did not significantly influence the crediting process in Russia (since Poland inclined more to Western Europe, and the Warsaw Exchange was geared in its activity to Berlin Exchange), Polish credit institutions, as well as Baltic ones, may be considered an intermediate link between the Russian Empire and Western Europe⁷⁷¹.

The Bank of Poland's branch in Berdichev helped the town become an important center of financial and credit operations. Even after closing the Bank of Poland's branch in Berdichev in 1838 at the request of Bibikov, the governor-general of Kiev (Bibikov thought that this branch's presence stimulated pro-Polish feelings), the effects of the bank were still present and the city continued to prosper⁷⁷². After the Bank of Poland's branch closed, eight banking houses located at Zolotaya Street in Berdichev became more important. In the 1850s, this little town became an important center of banking activity. Berdichev's banking houses discounted bills of exchange to Moscow, St.-Petersburg, Odessa and other cities, serviced the contract fair in Kiev and had close relations with banking houses and foreign bankers⁷⁷³. Their activities were not affected and did not preclude them from setting up a commercial bank branch in 1839 (soon after the closing of Berdichev branch at the Bank of Poland) which was to replace the Berdichev Branch⁷⁷⁴.

The specificity of *weksel* operations in Odessa is also significant. The main specificity of trade customs of this city was that bills of exchange were used here

(although they were used only in external trade, promissory notes were used in domestic trade)⁷⁷⁵. Taking into consideration how promissory notes were used in domestic trade in Russia, D. I. Mayer noted that foreign goods imported through Odessa were resold to Kiev, Kharkov, Poltava, Ekaterinoslav and Nikolaev. However, merchants sent few goods from these cities to Odessa. Traders from these cities had a number of creditors but few debtors in Odessa. That is why there was no equilibrium between creditors and debtors, which is crucial to the use of bills of exchange.

Promissory notes were widely used in Odessa; they adopted some strategies and methods specific to a bill of exchange. Sometimes after issuing a promissory note, the person receiving it signed it with an endorsement without recourse. The promissory note was taken by a issuer of the note who passed it on to a third person. In another case, a promissory note was issued on behalf of a person well-known to the person accepting it. If it was not in cash, a special paying slip was issued, and the *weksel* was circulated as a *weksel payable demand*. The holder of the promissory note gave the paying slip to the issuer and transferred himself the *weksel* with an endorsement without recourse, after which the *weksel* was in circulation⁷⁷⁶.

In addition, *weksels* in which the same person was a issuer and holder were also issued. The endorsement allowed such a *weksel* to be in circulation. In this case, the *weksel* with an endorsement should not be considered as a *weksel payable demand* because any liability stipulated two participating persons, and the liable parties had to be indicated in the *weksel* as a written document confirming this liability. In most cases, there was a issuer and a holder, and if these two persons were identical, it was necessary for a third person to participate in the *weksel*. *Weksel* pledging practice in Odessa was similar to loans against pledged *weksels* offered by the Commercial bank and its branches. The difference between these two operations was that the pledge was accepted not by a private person, but the state. In such cases, the legal essence of these operations remained the same⁷⁷⁷.

In the first half of XIX century, the banking credit developed very slowly. The reason was not only in the economic underdevelopment of the Russian Empire, but also in restricting the trade stratum's right to issue *weksels*. In addition, *weksel* operations were carried out mainly in capital. Only two branches of the State Commercial Bank were opened in Kiev and Rybinsk over the course of twenty years, while between 1817 till 1821, five braches of the bank were opened. New braches were set up only after the E. Kankrin's resignation—in Kharkov (1843), Ekaterinburg (1846) and Poltava (1852)⁷⁷⁸.

Private commercial crediting was underdeveloped ; state crediting offered by State Banks prevailed, which resulted in the development of usury. Usurers' clients were mainly noblemen deprived of the right to use promissory notes. A common usurious interest was about 8%, but in Odessa it was considerably higher, up to 36%

annually. It decreased only after the Commercial Bank's branch was opened there. In some districts, the usury credit was similar to the fair credit, i.e. local rich usurers brought money to fairs where merchants, landlords and other interested persons met to conclude credit deals.

During the first half of XIX century in Russia, the development of credit and *weksel* operations increased as a result of the attempts by K. I. Arnold, I. Akhmatov, I. S. Vavilov and E. A. Mudrov to create the Russian accounting system. However, the infrastructure necessary to stimulate the development of banking credit had not yet formed. Trade relations, capital accumulation, domestic and foreign commercial relations, class of entrepreneurs, new forms of trade and payment transactions were underdeveloped. In addition, a traditional Russian trade custom which was already mentioned must be taken into account—it was also uncustomary for merchants to address to commercial banks for credit⁷⁷⁹.

State Banks did not discount *weksels* on petty cash because banks were created to help major merchants. The latter had a monopoly to take credit from banks, and prevented middle and small traders from borrowing money. Such methods of credit operations organization ensured that only *weksels* on large amounts went through banks.

Despite the hundred-year operating period of credit institutions of the pre-reform period, credit and *weksel* operations were underdeveloped, the overall currency system's instability was the main reason for slow implementation of *weksel* operations and the hard cash trade prevailed. Even in the regions where *weksel* operations were already implemented, occasionally there was no real opportunity to discount a *weksel* and cash it. Thus, when the Commercial bank's branch was opened in 1843 in Kharkov (to credit landlords and manufacturers of Kharkov, Chernigov and Poltava guberniyas, as well as merchants from Kharkov), the trade was effectuated not as much for hard cash as for *weksels*. Although many merchants would have liked to cash these *weksels*, it was impossible due to the cash deficiency in Kharkov⁷⁸⁰.

The new *Weksel* Code was adopted on June 25, 1832. It was initially a part of the trade statutes. In 1887, it became an independent *Weksel* Code which stipulated the rules of *weksel* operations on the territory of the Russian Empire until 1902. The Code of 1832, which was influenced by French *Code de Commerce* adopted in 1807, incorporated amendments and alterations made to the Code of 1729 related mainly to restrictions. The main rules of *weksel* operations did not change, which continued the traditions of German exchange law. S. M. Barats noted that the Code of 1832 was a compromise between a German prototype of the Code of 1729 and French exchange law⁷⁸¹.

The necessity to amend the exchange law was substantiated in the Code's preface, where it was said, in particular, that the exchange law was one of the forces acting in trade, the success of which was inextricably intertwined with the sustainability and inviolability of the exchange law. The Code of 1832 was elaborated with M. M. Speransky's participation, a known adherent of French law, who repeatedly opposed the German influence on Russian law. That is why the Code of 1832 included in trade code reflected the French trade code structure. The Code of 1832 partially provisions of the antecedent Code, which is proven by borrowings from part III of the Code of 1729. French exchange law features are traced in borrowings from *Code de Commerce* (part VIII, art. 110-189)⁷⁸². However, the obligatory demand to indicate money received may be considered as a borrowing from the German exchange law, because this provision was not a feature in most exchange laws of XIX century. In addition, other typical features of the German exchange law are present. A particular feature was that it required the mandatory availability of the *weksel's* mark (words indicating that the document is a promissory note or a bill of exchange) (art. 2), which provided for an optional *distancia loci* for a bill of exchange (art. 3).

As a whole, the main provisions of the Code of 1832 are the following: 1) definitions of five general and obligatory requisites of both types of *weksel*, as well as four requisites of the bill of exchange; 2) words indicating that the document is a promissory note or a bill of exchange are mandatory; 3) determination of the *weksel's* value; 4) introduction of a notion of endorsement without recourse; 5) recognition of a blank endorsement; 6) for bills of exchange, it was not obligatory that the place of issuing and the payment place were different. B. F. Movchanovsky notes specific features of the Code 1832, such as: 1) without a special mark the *weksel* must not be transferred; 2) appeals to payment must be addressed to the persons who signed the *weksel* by the order in which they signed it; 3) the *weksel's* debtor may be detained until he pays his *weksel's* indebtedness⁷⁸³. Thus in the new Russian *Weksel* Code, an attempt to unify German and French laws is seen, although P. P. Citovich thought that the Code of 1832 did not objectify the French exchange law as much as the German one⁷⁸⁴. According to A. M. Osipov, combining separate provisions of West-European exchange laws with local traditions was the Code of 1832's main failure. Furthermore, it would be useful to borrow completely legal provisions of German exchange law when elaborating new exchange laws, as *weksel* operations methods in Russia varied little from ones in Germany⁷⁸⁵.

The Code of 1832's special feature was a clear definition of the legal equality between the promissory note and the bill of exchange. That was mentioned in the Code of 1729, where the parties of a promissory note (three or four) were stipulated, and a brief mention was made that fewer parties may participate in a promissory note. In art. 1 of the Code of 1832, it was said that «*the weksel is given from an issuer (drawer) either to himself, or to the second payee. The first weksel is a promissory note, while the second one is a bill of exchange*».

In the new Code, equivocations regarding endorsement, acceptance and *weksel* copies appropriated to the Code of 1729 were eliminated. The provision that it was not necessary for a bill of exchange's place of issuing to be the same as the payment place is significant. This provision contradicts the French exchange law and continues German traditions. In this respect, S. M. Barats thought that the Code of 1832 continued traditions of German exchange law, where the *weksel*'s legal force depended more on its form and less of its content. The complex socio-economic conditions favored this formal aspect of the *weksel*, which made it significant in Russia⁷⁸⁶.

Thus the Code of 1832 (as well as the anticipant Code of 1729) can be considered as another attempt to introduce legal standards of *weksel* circulation into the Russian Empire, standards that had been forming for centuries in Western Europe. In XVIII century, the attempts to determine *weksel* operations were only among merchants (Catherine the Great's decree of 1761 about the deprivation of the peasants and even nobility of rights to hold and pay *weksels*).

However, after the Code of 1832 was adopted, it turned out that it corresponded to the real needs of *weksel* operations on the territory of the Russian Empire for the same reasons that the Code of 1729 did. The major part of the Code of 1832 described the bill of exchange. Secondly, provisions which stipulated the use of promissory notes were unclear. They were not separated from articles that described bills of exchange, even though promissory notes prevailed in Russia. That is why the Code of 1832 went against the majority of merchants who used promissory notes.

The reason why the promissory note prevailed⁷⁸⁷ was a combination of socio-economic conditions regarding commodity-money turnover and credit operations, particularly the traditional institution of debt *kabala* that lasted for a long time and preceded the promissory note institution in Russia⁷⁸⁸. In addition, when a centralized implementation of *weksel* operations was started in the Russian Empire, the *weksel*'s function as a remittance tool lost its actual continuity, since the paper currency was used for that. Promissory notes prevailing in *weksel* circulation on the territory of the Russian Empire (bills of exchange were mainly used to hold foreign operations) contributed to the mass circulation of *weksels* not related to trade agreements, which were used to secure personal debt obligations of private persons.

What is the reason for the promissory note's popularity in Russia? Its nascence is a top-stone of credit relations development. The *weksel* emerged in countries where trusting relationships between partners existed, without which credit operations themselves could not exist. However, if for the promissory note, a trust between two partners in credit operations is needed, then for the bill of exchange, goods production redundancy is a must. In the latter case, producers were forced to trust each other to sell products effectively.

Lack of overproduction⁷⁸⁹ resulted in the outspread of the promissory note in Russia and Ukraine. Separate regions and foreign countries were slightly associated in trade, and the accounting was badly organized.

As P. P. Citovich pointed out, in West-European *weksel* operations of XIX century, the fact that a promissory note was issued signified that credit's resources were at the end. As a result, only small merchants used promissory notes and only in cases of urgency. It was considered that a major merchant could take credits anytime from other merchants, to whom he could draw *weksels*⁷⁹⁰.

With the adoption of the Code of 1832, a certain discord in the current legislation and a real practice of *weksel* circulation emerged in the Russian Empire. On one hand, the Code of 1832's provisions had legal force; on the other, customs borrowed from Germany existed in *weksel* operations. An attempt was embodied in the Code to reorient the Russian exchange law to the French exchange law system, which was based upon the classic Italian exchange law system. However, by the XIX century, the Italian exchange law became archaic and unrealistic for more modern applications. Russia had more close trade-economic relations with Germany than with France. Trade customs in Russia, including *weksel* operations customs, were closer to German ones than to French ones. In this respect, a disagreement in the Code of 1832's provisions with the provisions of German exchange law may be deemed as a key failing of this legislative act⁷⁹¹. In addition, among the Code's failures, A. V. Demkovsky believes that the stipulations of circulation of promissory notes and bills of exchange were muddled together. This made it difficult to distinguish defining articles describing promissory note circulation from ones describing bill of exchange circulation⁷⁹².

Soon after the Code was published, it was noticed that it did not correspond to the real situation in trade and credit operations of the Russian Empire. The necessity for the elaboration of a new exchange law became obvious. The Tsar's decree from November 12, 1847 provided for reviewing the provisions of Russian exchange law, taking into consideration the provisions of 1847 *Weksel* Code. The *weksel* reform aimed not only to a further development of the 1832 Code's stipulations and detailing the rules of *weksel* operations, but also in elaborating clear definitions of notions using in *weksel* operations. It was proposed to create two different Codes, one for promissory notes and another for bills of exchange (which requested merchantry's representatives), or to set forth all necessary rules in one Code indicating in every article whether it relates to the promissory note or the bill of exchange. However, the implementation of exchange legislation improvements in Russia was a long-term process.

3.7

Weksel Operations in the Second Half of XIX Century (1861-1914)

AFTER 1861'S REFORMS during the period between the second half of XIX century and the early XX century, the economy and market of the Russian Empire grew quickly. Industry developed, trade became one of the most important inducements for Russian markets to develop, and commercial credit was in high demand. To procure it, *weksel* operations became more and more used. During this period, they reached their peak volume, and legal regulations were thoroughly detailed.

Creating new markets in the southlands of the Russian Empire was a special feature of the second half of XIX century. They played an important role not only in domestic, but also in foreign trade due to the fast development of the multi-branch economy, the Black and Azov Sea ports and land customs⁷⁹³.

In the middle of XIX century, 61% export and 84% import were carried out through the Baltic sea, 39% of grain was imported through the Black Sea ports⁷⁹⁴. Since most of the grain was grown in Ukraine⁷⁹⁵, the Black Sea and Azov Sea trade ways were extremely important in its export. In 1908, the export through them reached 550,000,000 rubles in volume, while the export volume through the Baltic seaways was 430,000,000 rubles (the import was carried out mainly through the Baltic sea and was 350,000,000

rubles in 1908 compared with 94,000,000 rubles' export through the Black Sea and Azov Sea trade ways)⁷⁹⁶.

In the second half of XIX century, domestic trade was carried out mainly at fairs. Certain changes became obvious in fair trade. 4,930 fairs existed in the Russian Empire in 1858, and 1,953 fairs in Ukraine⁷⁹⁷. In Ukraine in 1895, there were 4,250 fairs, and 5,600 fairs in 1904. From 1895 to 1904, the cost of goods increased from 143,000,000 rubles to 260,000,000 rubles. An enhancement of commodity exchanges must be noted. In 1870, only one Exchange existed in Ukraine, and there were six in 1904. Kiev and Odessa's Exchanges played a leading role, while Yelizavetgrad and Nikolaev's Exchanges carried out operations for grain purchase and sale⁷⁹⁸. The Kiev contract fair was known for handling large scale wholesale operations of purchase and sales of agricultural products under contract. Major fairs of Southern Ukraine flourished, such as the Petropavlovskaya fair in Yarmolinty and the Uspenskaya fair in Nikopol, which specialized in wholesale grain exporting through the Black Sea ports⁷⁹⁹.

The leading grain export center was Odessa. Between 1861-1865, 18,200,000 poods of grain (sixteen kilograms) were exported annually, while in 1895, grain export attained a maximum of 60,500,000 poods. Many other goods were also imported through Odessa, such as tobacco, tea, rice, spices and cotton. This seaport also became the main center of trade for goods from the Orient⁸⁰⁰.

All this led to the increased need for commercial credit, including *weksel* operations⁸⁰¹. If in the first half of XIX century, the credit and credit institutions served the interests of nobility and government⁸⁰², then in the second half of XIX century, a developed credit system emerged. That is why the 1860s be called a turning point when the natural economy was replaced by cash economy.

In the second half of XIX century, the Russian government took measures to reorganize state credit institutions. Due to the system reform carried out by the initiative of Alexander II in the *Law Code about Commercial Trade*, commercial banks were established. However, there were few banks, and their aggregate capital in 1857 did not exceed half a million rubles, which was far less than that of State Banks. The main problem of crediting was that banks attracting large sum deposits did not have the opportunity to deposit them effectively. As a result, the overall amount of deposits in State Banks in 1856-1857 considerably increased—from 924,000,000 to 1,276,000,000 rubles. The consequences of credit system reform carried out in the 1850s resulted in fast developing joint stock companies which attracted capital. Even the resolution to terminate the issuing of permits for

setting up joint-stock companies could not slow the process. State Banks' debt to private investors reached an amount exceeding 900,000,000 rubles, causing them to go bankrupt. A special commission was formed to help stop this process. The government's first step was the reorganization of the State commercial bank.

The State Bank was set up in 1861 and operated until 1917⁸⁰³. The bank had the right to discount *weksels* and other term securities, as well as to lend credits. State Bank funds were formed mainly from treasury deposits and bank-notes, while deposits of industrial enterprises and private entrepreneurs were held mainly in joint-stock banks⁸⁰⁴.

Weksel discounting was the main bank operation (which was stipulated by the Code of 1860). To receive the right to discount *weksels*, it was necessary to lodge a preliminary credit at a certain amount⁸⁰⁵. The bank's structure provided for a special department for credit acceptance, as well as a committee for discounting and lending credits (the discount and loan committee). Since *weksel* discounting was one of the most important bank functions, the volume of this operation increased constantly⁸⁰⁶.

The main condition of *weksel* discounting was that they had to be based upon trade agreements, secured by signatures of two reliable guarantors, and paid in the same region where there were banks or treasury establishments. Financial *weksels* of a speculative nature were not accepted for discounting, which is why *weksels* of landlords who actively traded grain (their *weksels* were mainly issued to receive an advance payment for grain deliveries) were not accepted for discounting; landlords themselves lost the opportunity to get a loan. However, in 1874 the bank's policy changed, and nontrading *weksels* appeared in its portfolio. The bank began to receive landlords' *weksels* issued by grain traders, and discount landlords' *weksels* on the condition that they were issued in the name of grain traders. Later the bank began to accept landlords' *weksels* issued in the name of other landlords on the condition that both parties were members of a guild (in 1885, this condition was abolished, causing the set of customers allowed to discount *weksels* to expand).

The average tenor of *weksels* was from three to six months. It was stipulated that the *weksel* was signed by two guarantors who could guarantee a client's creditworthiness⁸⁰⁷. *Weksel* discounting and borrowing against *weksels* were the most important in terms of volume operations (50-60% on average) during the State Bank's activity. This was due to the bank's policy which preferred to discount *weksels* secured by a guarantee system. It has to be noted that the *weksel* discounting prevalence over other forms of crediting was typical for most central banks of Europe during that time.

The specificity of *weksel* discount crediting was the following: in the form of a *weksel*, the written debt agreement was presented, in which the debt repayment

was guaranteed by known merchants. After the request for a loan was made, discounting and loan committees selected the most reliable *weksels* and vested benefits to regular customers (i.e. to other banks and trade and business firms). In case of the debtor's financial insolvency, the guarantor who signed the *weksel* had to either clear the *weksel*, or replace it by a reliable pledge. In case of non-return of the credit, the *weksel* was protested, after which the debtor's bankruptcy procedure began.

The advantage in *weksel* discount operations was offered to short-term *weksels* that did not comply with the needs of the economy's development, since short-terms *weksels* were mainly used for loans in trade (in the middle of XIX century, the light industry and trade prevailed in the cities of the Russian Empire). From time to time at merchants' requests, the State Bank agreed to extend the period of *weksel* discounting to nine or even twelve months. The discount of reliable *weksels* for major entrepreneurs did not promote the credit development of small and mid-size manufacturers of the agricultural sector.

The medium *weksel* value in discount transactions of the State Bank was higher than in Western Europe. In the Russian Empire, *weksels* were used among a limited stratum of major merchants taking considerable credits to hold the intermediary activity. Credits were not given to small merchants, what prevented *weksel* circulation from developing.

In 1860, 42,390 *weksels* in the amount of 72,000,000 rubles were discounted in the State Bank and its branch offices, while the Bank of France and its branch offices discounted 728,018 bills of exchange in the amount of 1,200,000,000 rubles (at the rate of exchange in the year 1860). The latter figures show the underdevelopment of the credit system in the Russian Empire at the time. Due to the *weksel*'s prevalence only among the top merchantry, its medium value (1,638 rubles in the year 1860) was considerably higher than, for example, the Bank of France's (the equivalent of 240 rubles)⁸⁰⁸. The high rate of *weksels*' medium value significantly limited the number of *weksels* discounted in the State Bank (in 1876, it was 2.5% of the total amount of *weksels* in circulation), as well as the availability of a loan, inducing a need for intermediate parties among those who had such credits and those who did not⁸⁰⁹.

The *weksel*'s medium value differed and depended on which region the State Bank's branch offices were situated. According to the data of the 1880s, the majority of *weksel* discounting transactions was carried out in Moscow, where the light industry, particularly tissue manufacturing, was actively developing. However, Kiev was ahead by the rate of the *weksel*'s medium value (8,149 rubles). A heavy growth of the sugar refining industry favored this, a special feature of which was a long-lasting annual cycle of raw material growth and sugar selling in gross. The *weksel* value rate in Warsaw and Riga was the lowest, where *weksel* operations were divided among the middle and small merchants.

Such an indicator as the *weksel* medium tenor was further evidence of the underdevelopment of *weksel* circulation in the Russian Empire. The total number of *weksels* discounted from 1860 to 1870 increased from 62,300,000 rubles to 165,000,000 rubles. These terms prove that in discounting transactions five-months-term *weksels* prevailed. To avoid discounting of long-term *weksels*, in the first Statute of 1860 of the State Bank, the *weksel* tenor was limited to six months, which did not correspond to the real needs of trade operations⁸¹⁰.

In the 1870s, a slump in trade and credit operations occurred, since the Ministry of Finance tried to support the *weksel* rate artificially. Due to the temporary overstatement of the national currency rate, prices for Russian goods rose. These measures were considered as a preparation for the monetary system's reform, but the Russian-Turkish war began on the April 12, 1877 and broke these plans because it induced heavy costs (1,107,000,000 rubles)⁸¹¹. After the termination of the war, the stabilization of money circulation became the most important task. This also favored the resignation of M. Kh. Reytern, Minister of Finance, who was charged with erroneous policies of the Ministry. In 1881, N. Kh. Bunge, professor of Kiev University and well-known economist of that time, became Minister of Finance.

The data tabulated in the table 3.7.1. shows the *weksel* operations trend.

Table 3.7.1.

The State Bank's *weksels* operations trend (1881-1894)⁸¹²

Year	Average principal	Amount of <i>weksels</i> discounted, mln. rubles	Number of <i>weksels</i> , thousand pieces
1881	200	400	500
1882	180	420	540
1883	170	430	570
1884	150	450	600
1885	170	320	500
1886	100	350	520
1887	110	400	600
1888	115	440	700
1889	90	400	600
1890	85	370	595
1891	80	350	590
1892	75	300	450
1893	74	500	800
1894	75	530	1200

The principal steadily decreased, while the number of weksels and the amount of weksels discounted rose (despite of two short recession periods in 1886 and 1892). This increase can be considered as proof of the weksel circulation expansion and the greater number of entrepreneurs involved in it.

The Moscow branch led weksel operations in volume, while Odessa's office was second (at the end of XIX century, Kiev's office was second). In Moscow and St.-Petersburg, the domestic trade oriented to Moscow's market, or to the external market, was important. Odessa became a popularly accepted foreign trade center, which traded not only grain, but also different goods exported to the Russian Empire by trade ways of the Black Sea and the Mediterranean Sea. In 1867, weksel discounting was effectuated by the State Bank's regional offices as follows: the St.-Petersburg office held 32% of discount operations, Moscow's office 30%, Odessa's office 9%, 5% in both Riga's and Rostov-on-Don's offices, 3% in both Kiev's and Kharkov's offices⁸¹³. It can be noticed that the discount operations of weksels in Moscow's merchant bank rose quickly during the first years of its existence (Table. 3.7.2).

Table 3.7.2.

**Weksels discounted growth in the Moscow merchant bank
(1867-1869)⁸¹⁴**

Year	Weksels discounted, (in millions of rubles)	Loans against weksels, (in millions of rubles)
1867	2,714	3,217
1868	8,989	7,673
1869	17,947	13,799

Following the example of Moscow and St.-Petersburg, the joint-stock banks appeared in other trade centers. Twelve commercial banks were set up in Ukraine in the last three decades of XIX century⁸¹⁵. In 1867, the Kharkov Merchant Bank and the Kiev Private Commercial Bank were set up with N. Kh. Bunge's assistance, Head of Kiev's branch of the State Bank by that time, as well as the Kiev industrial bank (1871), the Nikolaev commercial bank (1872), the Odessa discount bank (1879) and others.

The majority of the banks did not exist for a long time. During the end of XIX and in the early XX centuries, there were only two commercial banks in Ukraine—the Kiev Private Bank and the Odessa Discount Bank, which were joined by the Odessa Merchant Bank, established in 1912. These banks did not lead in the credit system of the Russian Empire, as in 1913 their capital was less than 1.5% of Russian commercial

banks' capital, 0.5% of total money circulation, and 0.6% of weksels discounted. The Ukrainian banks' role, as well as the other so-called provincial banks, can be explained by a close relationship between private banks, the State Bank and the Russian Ministry of Finance⁸¹⁶.

After the recession in 1891-1892, the credit market linked to securities normalised faster than market linked to weksels (table 3.7.3).

Table 3.7.3.

**Trend in the State Bank credits collateralized by weksels vs.
interest bearing securities (1890-1894)⁸¹⁷**

Year	Credits linked to interest bearing securities, (in millions of rubles)	Credits linked to weksels, (in millions of rubles)
1890	97.7	90.0
1891	82.5	90.0
1892	31.8	40.6
1893	119.9	44.7
1894	156.4	79.7

In the 1890s, a practice of weksel discounting against lower interest of West European banks, mainly in Germany, became popular among major firms. In 1894, the State Bank decided to make a deal to purchase weksels for its major branch offices in Warsaw, Kiev, Moscow, Riga and Kharkov, including Taganrog's office of Kharkov's branch. As a result, weksel purchase transactions, which were previously used only in St.-Petersburg, increased⁸¹⁸.

Mortgage lending was also common in many European central banks: the Bank of France and the German Reichsbank accepted landlords' bills of exchange. Despite the fact that loans secured on a property were long-term in Russia and were frequently not reimbursed, in 1874 the bank began to accept landlords' weksels from merchants who traded grain⁸¹⁹. In 1877, the bank was granted the right to lodge acceptance credits in favor of landlords, and in 1884, at the Ministry of Finance's request, the State Bank began to accept promissory notes (straight papers) from landlords signed by one signature on the security of immovables (to support the agricultural sector after failures of the crop in 1879, 1880 and 1882). As I. I. Levin pointed out, such credits were quite risky because these immovables could not always be sold, therefore the credit converted in a long-term one and was hardly ever repaid⁸²⁰. The promissory note operation became the most popular in the agricultural regions, especially in Odessa. The data proving the promissory note linked credit development is presented in table 3.7.4.

Table 3.7.4.

Trend in the promissory note linked credit in 1884-1914,(in millions of rubles)⁸²¹

Year	Annual issuing	Debt as of the end of the year
1884	0.9	0.8
1890	16.6	8.6
1895	42.3	26.8
1900	12.2	8.0
1905	15.5	9.8
1910	16.2	9.6
1914	24.5	20.7

At first, the bank valued only six-months terms for commodity weksels. To value nine-month term weksels, a special bank request and the permission from the Minister of Finance were needed.

Due to long distances between towns and the underdevelopment of transportation infrastructure, these restrictions caused significant problems. On December, 26 1892, the *Temporary Regulations on Weksels Discounting* were published, which expanded the weksel discount operations over non-commodity weksels and weksels to be paid in a year-long term. For discounting of weksels from nine months up to a one year term, the risk discount was withdrawn.

In 1892, S. Yu. Witte was appointed to the post of Minister of Finance. He made the industrialization of Russia the primary task of his policy. Intensive crediting of Russian industry began, the total volume of which reached 1,100,000,000 rubles. As a result, over a five year period, the volume of discounted weksels and other securities considerably increased.

S. Yu. Witte's policy was reflected in the new Statute of the State Bank. In particular, amendments were put in articles regarding the Discount and Loan Committee. Since the new Statute, among other bank operations, stipulated for an acceptance credit, art. 61 stipulated for setting up two departments of the Committee—the department of industrial credits and the department of agricultural credits. As a whole, the major part of the new Statute of the State Bank described credit policy issues. It was supposed to maintain the credit industry and boost the agricultural sector of the economy.

If in the Code of 1860, weksel discounting was limited to weksels issued on the basis of trade agreements (art. 27), then the Statute of 1894 stipulated for the acceptance of weksels issued for both trade and industry. Thus the restrictions incurred for weksels of small businesses were lifted. The Statute stipulated for the acceptance of issuing credit to small industrial enterprises and landlords. Advantages of extending weksel

discounting terms were provided, and in compliance with the explanatory note to art. 78, this term was prolonged to twelve months (it must be noticed that such a prolongation of the term may be considered as extremely favorable because, for example, in the German Reichsbank it was prohibited to discount bills of exchange and promissory notes issued on terms exceeding three months).

According to the decision of June 6, 1894, the State Bank's structure was changed. The Weksel Department was added to the bank. The First Deputy Director of the bank was usually appointed to the post of Director of this department. The Weksel Department was responsible for the following: to accept weksels on a special current account to discount them, collect weksels sent by bank's correspondents, send weksels to collect from bank's correspondents.

A firm in favor of which a credit was lodged had the right to discount weksels in the bank. In order to discount a weksel, it was necessary to submit an application in due form blank where data about the firm was indicated, such as a specificity of commercial activity, the term of operating activity, the average working capital, immovables available, whether it uses credits from other credit institutions, etc. After the scrutiny was done, the bank assessed whether the firm was reliable or not. To do so, the bank solicited information from clients and correspondents.

A special investigation was conducted to determine whether a real agreement had been reached since weksels of round denominations were rarely used in trade agreements. To discount weksels, a bank's client had to hand them in along with a special list-register. He was then given a receipt which indicated when he had to present himself to receive money or the bank's weksels. During this time, the weksel's regularity was carefully examined; those executed incorrectly were excluded from the list-register. After such careful examination of the weksel and the determination of discount transactions conditions, it was stamped on its back side with endorsement in favor of the bank. Finally, the weksel was transferred to the weksel cash desk.

Every day weksels were selected, and the register of weksels presented for collection was drawn, which was passed to the cashier with weksels themselves. After the money from the client was received, the weksel was stamped and returned to the client. At the end of the day, money was passed to a common cash office. Weksels that were not paid were passed on to a notary to protest. Weksels noted for protesting were registered in a special book, and the decision on how to receive the money as fast as possible and in the most reliable way was made. The head of the Weksel Department of the bank took the control of drawing acceptance credits and weksel discount operations.

The above described method of lending acceptance credits proves that the order of carrying out of weksel operations was elaborated in detail at the end of XIX and in the early XX centuries. For a long time, weksel discounting was the major operation of securities trading, carried out in the Russian Empire by commercial and State Banks.

After the bank's Statute was adopted, S. Yu. Witte's next step was the realization of currency reform in 1895–1897. All these measures pursued the same objective, which was to create a favorable system of crediting for national manufacturers. None of the European banks of that time provided large-scale crediting for them. Therefore, the regulation of economic reforms by the state was a Russian specificity of S.Yu. Witte's policy.

The reforms of the 1890s resulted in growing *weksel* discount operations and the creation of special *weksel* accounts, whose volume of operations increased twice during a twelve year period, from 194,400,000 rubles to 372,370,000 rubles⁸²².

The banks effectuated the conversion from operations with trade *weksels* to ones with *weksels* of industrial enterprises through various methods. By the time of fast industry growth in Russia at the end of XIX century, the industrial equipment had low cost, the matter about its modernization was not discussed and crediting was focused on trade operations. The industrialization at the end of XIX century changed the situation—the number of securities of industrial enterprises, including *weksels*, began to increase. *Weksel* operations in Russia developed in the early XX century, which may be explained by the capitalist system set up in industry and trade. This activity led to the diminishing of *weksel* terms and the average amount of *weksels*. However, this process lasted for a long time, especially regarding *weksel* terms (table 3.7.5). *Weksels* receivable discounts and special current accounts for *weksels* rose from 32,000,000 rubles in 1861 to 261,000,000 rubles in 1900; loans and special current accounts for securities—from 11,000,000 to 73,000,000 rubles, respectively.

Table 3.7.5.

The rates of average value and average tenor of *weksels* discounted (1870–1909)⁸²³

Year	Average value of <i>weksels</i> , In rubles	Average tenor of <i>weksels</i> , in days
1870–1874	1,866	156
1875–1879	1,866	138
1880–1884	1,769	149
1885–1889	1,071	149
1889–1894	777	137
1895–1899	582	109
1900–1904	475	96
1905–1909	428	92

Although the volume of the State Bank's commercial operations was significant, the total amount of accounting and borrowing operations of all commercial joint-stock banks in the late 1880s was equal or even exceeding the amount of these operations carried out by the State Bank⁸²⁴. The *weksel* discount operation and credit lending linked to *weksels* were common for commercial banks of different regions of the Russian Empire, as well as for private banking houses, the representatives of which were founders and co-founders of joint-stock commercial banks. Among them were E. M. Mayer, I. E. Guintsburg and V. Ya. Obolonsky in St.-Petersburg ; L. Kronenberg and S. Frenkel in Warsaw; Efrussi and Rafalovich in Odessa. *Weksel* discounting was led by I. E. Guintsburg's banking house. His bank outperformed its competitors in *weksel* collection, as it was established 12-15 years before the first joint-stock banks were set up. The bank had a branch in Paris and was widely known in Western countries, being comparable with major credit institutions there.

As far as the rate of the State Bank and joint-stock banks' activity in *weksel* discounting and acceptance crediting is concerned, the data shown in the table 3.7.6 proves that the State Bank was a leader of the short-term acceptance credit market, significantly influencing *weksel* discounting.

Table 3.7.6.

The rate of *weksel* discounted in the State Bank and joint-stock banks (1870-1900)⁸²⁵

Year (as of January 1)	State bank	Joint-stock bank	Total, (in millions of rubles)		
	Weksels discounted and a special current account for weksels, (in millions of rubles)	Ratio to the total volume of weksels discounted in all banks, %		Weksels discounted and a special current account for weksels, (in millions of rubles)	Ratio to the total volume of weksels discounted in all banks, %
1870	50.9	61.8%	31.4	38.2%	82.3
1875	70.9	22.7%	240.4	77.3%	311.3
1880	96.4	39.8%	138.0	60.2%	244.4
1885	104.9	40.0%	158.1	60.0%	263.0
1890	152.4	50.6%	148.5	49.4%	300.9
1895	217.8	50.8%	210.2	49.2%	428.0
1900	260.8	38.1%	425.4	61.9%	682.6

The data showing the level of *weksel* discounting in several commercial banks of different regions is presented in the Table 3.7.7. The overall political crises of 1900-1905 caused a temporary decrease in the industry's investment.

Table 3.7.7.

**Weksel discounting in commercial banks of
the Russian Empire (1909)⁸²⁶**

The name of the bank	Capital assets, (in millions of rubles)	Weksels discounted, (in millions of rubles)
St.-Petersburg discount and lending bank	150	17.9
St.-Petersburg commercial bank	8.0	7.4
Moscow merchant bank	1.0	77.9
Moscow discount bank	18.5	1.5
Russian bank for foreign trade	40.0	57.0
Kiev private commercial bank	2.5	3.5
Warsaw commercial bank	12.0	23.2
Warsaw discount bank	4.0	8.4
Azov and Don commercial bank	20.0	59.9
Riga commercial bank	5.0	18.9

As of January 1, 1900, industry securities in the amount of 37,459 rubles were issued by the banks of the Russian Empire, and 33,866 rubles (13% less) as of January 1, 1905. Furthermore, after the 1905 crisis was overcome, the industrial and bank capitals united. The acceptance credit and weksel debts played a leading role in transferring the control over industrial enterprises to banks.

The indicators of the development of commercial acceptance credit are shown in Table 3.7.8.

Table 3.7.8.

**The commodity turnover and weksel circulation ratio
in the Russian Empire in the late XX century⁸²⁷**

Year	Billions of rubles			Increase, %	
	Commodity turnover	Weksel circulation		Commodity turnover	Weksel circulation
1901	11.0	6.20	54	100	100
1908	13.1	7.65	58	113	123
1913	18.5	13.25	71	160	213

Another specificity of *weksel* circulation at the end of XIX and the early XX centuries was a great amount of noncommercial *weksels*. In I. F. Guindin's opinion, there was a considerable amount of financial *weksels* in the State Bank's portfolio. Consumer's credits lent by mutual crediting societies, as well as industrial credits offered by major banks were a part of this flexible system. Although commercial credit was widely used, during XIX century, an average merchant avoided issuing *weksels* in order to sell goods on credit. In the early XX century, these conservative customs disappeared, and the commercial credit was drawn more and more frequently through *weksels*. This practice was also applied to the wholesale trade.

The reforms positively influenced the economy's development, and by the middle 1890s, the industry of the Russian Empire was mature. The time that S.Yu. Witte held the post as the Minister of Finance became a period of successful development of the Russian industrial program and its wide economic expansion. Russia became one of the most economically developed countries in the world. P. Stolypin's reforms for further industrial economic expansion were interrupted in 1914 by World War I and, consequently, the events of 1917. That is why 1913 is commonly accepted as a working standard of the economy's development of pre-revolutionary Russia⁸²⁸.

In the early XX century, especially during the times of industrial economic expansion in 1909–1910, *weksel* operations flourished. The bank's role of crediting accounts through *weksels* considerably increased to 32.1%. However, according to I. F. Guindin, the economic level of Russian trade at that time was low (except for the major companies), which resulted in supply delays, the failure to fulfill their conditions, etc. Trade books and accounts were in disorder in both small and mid-size businesses⁸²⁹. In such conditions, while capital turnover in trade was slow, *weksel* operations were aimed at accumulating considerable means for credit commodity turnover.

Weksels became widely used to draw up commercial credits between the end of XIX and the early XX century. However, the trade and commercial relations of that time are characterized by a will of major merchants not to allow less active merchants to borrow money, which explains why the average sum of *weksels* was so considerable. It decreased steadily, as small and medium traders were attracted to *weksel* operations.

In 1901, 46% of *weksel* circulation consisted of bank credits, in 1908–49%, in 1914—more than 70%, which proves that the maximum coverage of *weksel* operations by bank credits took place along with the overall growing volume of financial operations. Long-lasting terms of commodity-money operations provided for slow capital turnover, which resulted in a higher demand for commercial and banking credit.

The *weksel* operations rate in the total commodity-money turnover constantly increased, having attained its maximum in early 1914. The average tenor of a *weksel* increased steadily (up to three, six, and even twelve months), however promissory notes prevailed. The average value of *weksels* was high, and this limited small to mid-size entrepreneurs from using the acceptance credit. Apart from that, there was a great amount of noncommercial *weksels* in circulation.

3.8

The Development of the Exchange Law in the Russian Empire (1861-1917)

THE PERIOD BETWEEN the end of XIX century and the early XX century was when *weksel* circulation began flourishing in the Russian Empire. That was reflected in the provisions of the *Weksel Statute* of 1902⁸³⁰. The content of this document, in addition to a long-lasting sophisticated history of its creation, reflected all the main problems of *weksel* circulation in Russia during that time, such as a necessity to have a Statute about promissory notes, a clear division of circulation rules distinguishing promissory notes and bills of exchange and a discussion about the limits of *weksels*' financial solvency.

After the *Weksel Statute* was published in 1832, its failures relating to the specificity of commodity-money turnover in the Russian Empire became evident, including the overall low levels of population culture, the lack of knowledge for good legislation, an insufficient amount (or absence) of required institutions, the underdeveloped transport system and huge distances between cities. It must be noted that promissory notes prevailed in Russia, being used in domestic trade as an instrument of non-commercial credit. Its prevalence over a bill of exchange was so significant that the notions of promissory notes and bills of exchange did not exist; the word *weksel* (from German 'Wechsel') always meant the promissory note. The bill of exchange was used in the Russian Empire only in foreign trade.

Fifteen years after the adoption of the first *Weksel Statute*, the problem came up to amend the exchange law, and the work on elaborating the new *Weksel Statute* began.

On November 12, 1847, the Second Department of the Imperial Office reviewed the exchange law, taking into consideration the German Wechsel Code of 1847.

It was evident, taking into consideration the real conditions of *weksel* circulation and all-round predominance of promissory notes, that the *Weksel Statute* of the Russian Empire had to be drawn up in such a manner that it would describe promissory notes, and the specificities of bills of exchange would be presented in appendixes. However, *weksel* statutes of West European countries, were created based on another principle. They described bills of exchange and usually contained only several articles about promissory notes. It is not surprising that the attempts to draw up the *Weksel Statute's* drafts, citing to the uttermost the provisions of West European statutes related to bills of exchange and promissory notes (mainly citing the German Code of 1847 as an example of the most perfect Code of that time) were criticized by *weksel* operations specialists.

The work on the elaboration of a new *weksel* statute used the experience of West European exchange law, and, being applicable for Russia's conditions, lasted for a long time. The history of the project's implementation showed considerable problems and outstanding issues in the practice of *weksel* operations in Russia in the second half of XIX century.

After the exchange law was reviewed in 1860, the draft of a new *weksel* statute was issued, based on the ideas of German *Weksel Code* of 1847. This project was passed for preliminary examination to stock exchange committees, departments of commercial and manufactory council, commercial courts and individual executives who were aware of the specificity of *weksel* operations. While this project was reviewed, the law dated December 3, 1862 spread the *weksel's* financial solvency not only to merchants, but also to other social classes, with the exception of inferior military ranks, clergymen, peasants and married women without their husbands' consent. The spread of the *weksel's* solvency was an important step to comparing it with the public legal capacity.

After the draft of new *weksel* statute was discussed and the observations made were incorporated, the draft was presented to a special committee of the Second Department of the Imperial Office, where it was observed with the participation of merchants. After it was refined, it was presented for further discussion in 1866, and in 1880, a new draft of the *weksel* statute was prepared and presented to the Ministry of Justice and the Ministry of Finance. Based on the tsar's decrees as of September 25, 1881 and February 17, 1882, a special council for discussing all variants of the project was established at the Ministry of Justice.

In 1882, the statute's draft was published in the Russian, German and French, which resulted in a number of comments from the merchantry, as well as from Russian and foreign lawyers, mainly German⁸³¹. Taking into consideration these discussions and the publishing of the English *The Bills of Exchange Act* (as of August 18, 1882), the Italian Trade Code (as of April 2, 1882) and the draft of Dutch *The Bills of Exchange Statute* of 1882, the statute was redrafted, and provisions from the above stated statutes related to bills of exchange were incorporated. German scientists' criticism towards

this redrafted statute led to preparing another draft of the statute dated 1884, which was published with detailed comments. As S. M. Barats pointed out, the 1882 draft in its final form was the third attempt at coding the exchange law in Russia, which had combined the experience of exchange law redrafting dating back to 1847⁸³².

As a whole, this activity may be divided into two periods. The first period until 1880 was dedicated to perfecting the exchange law. It aimed to make corrections to the 1832 *weksel* statute and eliminate defaults contained in it (in particular, the lack of clear definitions of the notion of *weksel* circulation and a clear indication of which provisions of the exchange law referred to promissory notes and which provisions referred to bills of exchange). As a result, the 1860 draft was prepared and discussed with group of experts, merchants and bank representatives. Later a new version of 1866 draft was published, where the defaults of the exchange law of the Russian Empire gave rise to unfavorable criticism from business representatives, as well as their proposals for improving the exchange law and *weksel* circulation as a whole. The majority of the comments made were about the necessity to divide provisions for promissory notes and bills of exchange, as promissory notes were typically in use, and bills of exchange were considered random⁸³³. In addition, it was demanded to preserve samples of *weksels*. The samples were attached to the 1832 statute, as well as to the 1866 statute's draft. In most cases, article 10 of the draft was not corrected, which limited the *weksel*'s financial solvency to clergy and inferior military grades. The majority of comments were about deviations from the provisions of the German *Weksel* Statute.

During the second period (after 1880), attempts to correct the 1832 Statute were not made. Instead, the goal was to create a new document based on the Italian Trade Code, in which (as distinct from all other West European exchange laws) the provisions about promissory notes and bills of exchange were not stipulated separately, but together. That was of special interest for the Russian Empire because promissory notes prevailed in circulation.

By creating a new *Weksel* Statute, the objective was supposed to not only bring together Russia and Europe, but also to promote the international, European (and perhaps global) exchange law based on the principles of German *Wechsel* Statute. However, these ambitious objectives, according to P. P. Citovich, considerably restrained the work because all changes in international exchange law had to be traced back (between 1860 to 1882 the Swiss, Italian, English, Scandinavian *Weksel* Statutes appeared, as well as the Dutch *Weksel* Statute's draft). The project's basic principle was a general *weksel* financial solvency. It was supposed that any person, who had the right to assume other liabilities (art. 1) could assume a *weksel* obligation. The *weksel*'s financial solvency was declared equal to the public legal capacity. The reason for a common *weksel* financial solvency was stipulated: since personal detention was cancelled, any limits of *weksel* financial solvency became inadvisable.

According to the project's authors, the common and unrestrictive *weksel* financial solvency would stabilize the *weksel* circulation, as the last *weksel* holder would be

sure that his predecessors' signatures on the *weksel* are valid, as their *weksel* financial solvency was reliable. In the case of restricting *weksel* financial solvency, many people in need of the acceptance credit would be deprived of it⁸³⁴.

The 1884 draft's upsides are precise statements, concrete interpretations of the notion of *weksel* circulation. New terms were introduced (for example, «a first purchaser, the first *weksel* holder») to avoid using foreign origin notions, typical of 1832 Statute. This allowed the authors to be optimistic in their assessment of its results, particularly the ones relating to the trade and credit improvement, the extensive use of *weksels* in the Russian Empire's economy, the judicial practice's convenience and the overall improvement of exchange law in Russia.

In 1884, the project presented before State Council, however the important comments made by the Ministry of Finance became the reason for its reexamination by both the Ministry of Finance and in Ministry of Justice. Furthermore, when a special commission incorporated the comments made by Ministries, some variants of the new promissory note Statute's draft were proposed (in 1884, 1890, 1895), in which an obvious influence of German exchange law was present.

The final draft of the *Weksel* Statute elaborated by P. P. Citovich at the request of the Minister of Finance S. Yu. Witte, was presented in 1899 before State Council. Finally, on May 27, 1902, the project was approved. The new *Weksel* Statute came into force on January 1, 1903. The Statute's provisions followed the West European exchange law's stipulations and were based on mainly on the provisions of the German *Wechsel* Statute. As A. I. Kaminka pointed out, although some provisions of 1902 Statute differed considerably from German exchange laws, their similarity was preserved as a whole. That was due to the fact that in XIX century, the Russian Empire had very close commercial relations with Germany. The German exchange law had substantial advantages over outdated French exchange law and was also used by national exchange laws of other countries⁸³⁵.

The Statute contained 126 articles (there were only 100 in the German Statute). The samples of *weksels* and different remarks were attached to it. The Statute contained two parts, «About Promissory Notes» and «About Bills of exchange.» It was the first time that in the Russian exchange law, the rules of promissory note bill of exchange circulation were legally marked off, which helped to avoid equivocating the Statute's notions with respect to *weksel* circulation rules.

Every part of the Statute included subdivisions, whose order was the same in both parts and corresponded to *weksel* operation stages. The first part described issuing a *weksel* and the conditions it had to meet. The second part described the liabilities (the payment date, advance payments, payment requests and the consequences of non-payment). The third part described *weksel* protesting, the fourth described the terms of claims and the fifth described the loss of *weksels* and explained how to apply the foreign legislation. The subdivisions of the second part describing bills of exchange were structured similarly.

It was noted in the Statute's preface (art. 1) that *weksels* were both promissory notes and bills of exchange; the promissory note circulation rules are applicable to bills of exchange, but specific requirements, stipulated in the second part of the Statute, had to be followed. The following examples depict the forms of promissory notes and bills of exchange, in compliance with the 1902 Statute.

The promissory note with settled payment date (art. 5, cl. 1):

«St. Petersburg, November 24, 19 . . .

A weksel in the amount of 2,000 rubles

On January 2, 19 . . . , I am obliged to pay two thousand rubles against this weksel to Petr Ivanovich Vasiliev, Moscow merchant.

Sergey Ivanovich Petrov, a Smolensk merchant».

The bill of exchange with settled payment date:

«S. Petersburg, November 24, 19 . . .

A weksel in the amount of 2,000 rubles

On January 2, 19 . . . , I am obliged to pay two thousand rubles against this weksel to Petr Ivanovich Vasiliev, Moscow merchant.

Smolensk merchant Sergey Ivanovich Petrov to Moscow merchant Aleksandr Ivanovich Serebryakov

Moscow, Verkhnie ryady, № 19»⁸³⁶.

All persons who could, in compliance with the current legislation, assume debt obligations could assume a *weksel* liability as well. However, clergymen, peasants and women without the consent of their parents or husband did not have such a right.

Section 1 of Part I described the drawing up and circulation of promissory notes (art. 3). The payment place was admitted as the place of a *weksel* drawing, if an issuer (maker, drawer) did not indicate another place in the *weksel*'s text (art. 7). The issuer could appoint a special payer to pay the the *weksel* (art. 8). Several issuers could sign the promissory note and several first purchasers of it could be indicated (art. 3, cl. 4), however, the division of the *weksel*'s sum among several issuers or purchasers was not allowed. None of warnings that the liability was optional could be indicated the *weksel*'s text (art. 11). At the same time, it was mentioned that the documents not adhering to at least one of the requirements stipulated in art. 3-5, 9-11 were not *weksels*.

Section 1.2 of Part I described issuing and transferring promissory notes. In particular, it was pointed out that the first purchaser of a promissory note could transfer it into the ownership of another person, and the same right was passed on to every succeeding promissory note purchaser. The *weksel* could be transferred to one or many purchasers without dividing the *weksel*'s sum (art. 17). While transferring *weksels*, the author had the right to put an endorsement warning *«without transferring on me»* into (art. 21).

Section 1.3 described *weksel* holders and their representatives on promissory notes. A *weksel* holder could be recognized as a *weksel* holder in case he was indicated in the *weksel*'s text as its first purchaser, or if the *weksel* was transferred to him via endorsement (on condition that all endorsements should form uninterrupted series of endorsements). The *weksel* holder was not obliged to assure himself in the authenticity of all antecedent endorsements (art. 23). The *weksel* holder had all rights on the *weksel*, notwithstanding his predecessor's rights (art. 24). He could delegate the responsibility under the *weksel* to another person, indicated in a special backed *weksel*.

Section 2.1 stipulated the responsibility under promissory notes. It was said that by issuing a *weksel*, the *weksel* issuer undertakes responsibility for this *weksel* payment (art. 27). Apart from the issuer, all persons who signed the *weksel* bore liability (art. 28).

Section 3 described the procedure of the *weksel* payment. In art. 36, it was indicated that before the payment date, a *weksel* holder had no right to demand the *weksel* to be paid. The procedure of *weksel* payments was described in art. 40, 41. The *weksel* payment could be secured by the guarantee of a issuer or any person who signed the *weksel* (art. 57). However, the *weksel* guarantee could be issued only in the amount of the *weksel* obligation. It could be presented to several persons without the *weksel*'s sum being divided. Section 3 described the procedure of protesting promissory notes. Section 4 defined terms for promissory note claims presentation (art. 73). In Section 5, special rules regarding promissory notes were stipulated, regarding the loss of a promissory note (art. 78), as well as the foreign legislation's applicability if a foreigner undertook a promissory note obligation (art. 82).

The second part of the 1902 Statute described bills of exchange, and the order of presentation was preserved. In Part I, a specificity of using bills of exchange was described in detail. Thus in art. 92, it was pointed out that the bill of exchange had to be presented for payment at the place indicated in the bill of exchange's text. The bill of exchange may be presented for payment after the maturity date (art. 96). Section 5 of Part II described special rules of bills of exchange, including how many bill of exchange's counterparts (art. 120) may be issued (art. 115), as well as cases of a bill of exchange's loss (art. 125).

To improve the *weksel* circulation, the Statute admitted several new *weksel* types (including the bill of exchange drawn to itself, art. 87, cl. 1). Here are the 1902 Statute's examples of a typical bill of exchange drawn to itself:

«St. Petersburg, November 24, 19 . . .

*A *weksel* in the amount of 2,000 rubles*

*2,000 rubles should be paid against this *weksel* to Nikolay Nikolaevich*

Zhivkov, a Rybinsk merchant.

St. Petersburg merchant Ilya Ivanovich Savinov.

In the name of St. Petersburg merchant Ilya Ivanovich Savinov.

Nizhniy Novgorod, Glavny dom, № 16.»⁸³⁷

However, promissory notes «by his/her own order» were not allowed, because such promissory notes with blank endorsements could be easily converted to bearer bills of exchange (art. 87). At the same time, a bill of exchange was allowed to be issued «by his/her own order.» (art. 87, cl. 1) Below is an example of such a bill of exchange:

«St. Petersburg, November 24, 19

A weksel in the amount of 2,000 rubles

Upon presentation of this weksel, you have to pay two thousand rubles to me or my representative in the city of Rybinsk.

A commerce advisor, Nikolay Efimovich Korovin, to the name of Yaroslavl merchant Petr Ivanovich Sergeev in the city of Rybinsk.»⁸³⁸

Art. 3 stipulated the existence of fair weksels which could be presented for payment at anytime, as distinct from old fair weksels, the maturity date of which was not before the last day of the fair.

A problem of limiting of weksel financial solvency must also be reviewed⁸³⁹. Clergymen, peasants and women without consent from their parents or husbands were deprived the right to undertake a weksel liability. In the real practice of weksel usage, such a limitation caused a lot of arguments. In 1884 and 1889's drafts, the right to grant weksel liabilities to all citizens who had the right to bear responsibility under a contract was considered. However, the Ministry of Finance objected, believing that the attempts to put in a general financial solvency would brake the weksel circulation, and bank portfolios would be packed with a number of weksels not bound by trade liabilities.

Art. 2 of the 1902 Statute stipulated the weksel's content, where the essential features of the weksel were enumerated. In the Statute, there was no stipulation that the weksel had to be signed by a person authorized to do so by a power of attorney.

The new Statute's fundamental virtue contained a more detailed statement of a guarantee. In the 1832 Statute, only one article (art. 93) described a surety, which due to clumsy wording, caused several perturbations when applied. The guarantee was described as a subsidiary obligation, while in the new Statute, it was interpreted as a completely autonomous liability (art. 59)⁸⁴⁰.

As a whole, the 1902 Statute's basis was formed by such ideas of German exchange law as the weksel's abstractedness, economic rigidity and ability to be transferred⁸⁴¹. Due to this, the weksel became an obligation, not required to be marked when the value was received. Thus weksel operations were separated from any other pecuniary operations. On this basis, the weksel in the Russian exchange law acquired one of its most important features, i.e. the abstractedness of a weksel liability.

The 1902 Statute set forth a conclusiveness of the weksel liability, which had to be executed notwithstanding from one act or another. As A. Nölken pointed out, the convention of weksel liability implied not only the cases of whether a weksel should

be paid or not, but also the cases when the weksel debtor limited his/her liability, setting forth the scope or conditions of the liability not stipulated by the law in the weksel's text⁸⁴².

The 1902 Statute improved the guarantor's responsibility: he could only guarantee the weksel payment in full, and not be required to support one of the weksel's parties. The new Statute provided for the weksel issuer to limit the scope of his liability, prohibiting the weksel transfer against endorsement. Art. 22 allowed the weksel issuer to include a remark in the weksel's text prohibiting the weksel's transfer (*Recta clause* in the German exchange law), thus discharging himself from the responsibility against the persons to whom the weksel was transferred via endorsement. This article's provisions referred to the issuer only. Art. 21 set forth for those who endorsed the weksel that the weksel could be transferred without incurring the weksel's liability on themselves.

Defining the legal status of the weksel holder, the Statute (art. 23) described the weksel holder as a weksel owner if he was indicated in the weksel as its first purchaser or if he received it via endorsement. At the same time, a condition that endorsements should be made in a continuous sequence existed, starting from the first purchaser's signature and ending by a special or blank endorsement. The weksel holder should not verify the authenticity of signatures in antecedent endorsements. Provisions of this article did not cover those weksel holders who acquired the weksels by cutting corners of the Statute's provisions (being inherited, etc.), as well as persons who lost the weksel. In addition, art. 24 provided for the weksel holder to have all rights of the weksel, notwithstanding the rights of its previous holder. The main advantage of the new Statute was the provision which set forth the sufficiency of one protest to acquire all rights by the weksel holder in case of non-payment or non-acceptance of the weksel.

Art. 2 of the 1902 Statute defined weksel financial solvency amidst general provisions of civil law as the right to undertake a weksel liability (a passive weksel financial solvency), not referring to the right to incur a weksel liability on other persons (an active weksel financial solvency)⁸⁴³. The attempt to balance the weksel's financial solvency to the general legal capacity was heavily protested. The reason for the objections was the opinion that in order to stabilize crediting and currency circulation, only trade weksels were necessary. In the new Statute, provisions about weksel financial solvency limits were the same as in the previous Statute of 1832⁸⁴⁴.

The 1902 Statute included the article defining the time of putting the weksel into force, i.e. the weksel was considered to have been issued as soon as the weksel holder gained the right for the weksel, which was as soon as he bought it. As a whole, the Statute admitted the weksel's conclusiveness and the weksel's text simplicity, which improved its ability to be transferred several times from one person to another.

It must be noted that the 1902 Statute cited specified obligatory weksel requisites, seven for a promissory note, and nine for a bill of exchange. The Statute

required no more indications of the *weksel* currency, and even excluded the date of payment «*according to customs.*» Not only was the *weksel* currency excluded from the endorsement's obligatory features, but also the requirement to include the place and time of its drawing in the *weksel*'s text.

According to the Statute, to be in a free circulation, the formulation «*or by his order*» should not be put in the text of the *weksel* with an endorsement. The difference between the endorsement and backed *weksel* was clearly defined, as well as between the endorsement in full and payable demand.

The new Statute provided for more responsibility of *weksel*'s participants in the course of *weksel* payment. A payee had no rights to make objections based on his legal relationships with the antecedent holders, except for the cases stipulated by the Statute. It was prohibited to divide the *weksel*'s amount among several parties under the *weksel* liability. It stipulated for the autonomy of *weksel* liabilities in the process of a separate *weksel* circulation: if one of the endorsements was invalid, other *weksel* parties continued to be responsible for the payment.

A *weksel* guarantor's responsibility also improved. The Statute permitted *weksel* drawers to limit their responsibility by introducing a veto for transferring *weksels* via endorsements.

The main advantage of the new Statute was the provision setting forth that only one protest was needed for the *weksel* holder to acquire the rights in case of non-payment of a *weksel*. It must be mentioned that a unique maturity date for the *weksel*'s total sum was set forth, as well as the cancellation of days of grace for payments against *weksels*.

F. von Canstein in his monography⁸⁴⁵ analyzed in detail the differences between the 1902 Statute and the provisions of the German exchange law. He pointed out that clerical persons of all religions, peasants not possessing immovables or a patent on work, as well as women not having the right to effectuate some commercial activity on behalf of themselves were legally incompetent. For a married woman, the consent of her husband was required; for unmarried young women, the consent of their parents was needed (art. 2).

To become legally valid, the *weksel* had to be drawn up on a stamped paper (art. 3, 86) and completely filled in (art. 88). The *weksel*'s sum had to be written verbally and was duplicated with numbers (art. 4, 88).

Weksels to bearer could have been used for making payments at a certain fair (art. 5, 88). Otherwise, the fair *weksel* was due to be paid one day before the fair closed (art. 37, 101). If it was a one-day fair, it had to be paid the same day, even if it was a holiday (art. 48, 102). Before the fair opened, it was prohibited to present *weksels* for payment (art. 92).

The submission period for time-sensitive *weksels* and *weksels* to bearer was one year and could only be reduced (art. 6, 87). The conditions of interest and penalties were insignificant (art. 12, 87). Any changes made in

the *weksel*, as well as claims on it, had to be noted above the corresponding signature (art. 13, 19, 88, 89). It was applicable to the endorser's condition «*without recourse to me*.» The condition «*without recourse to me*» was not valid if the endorser of a valued *weksel* added it to the endorsement «*by his order*.» (art. 103) The *weksel* had to be endorsed by the original recipient upon, but in case of a third party ownership, endorsement had to take place, even in case it was not effectuated in reality, and the original recipient was informed about this (art. 15, 16, 24, 89, 90).

The *weksel* was indivisible (art. 17, 89). Signing of the *weksel* did not assure relief from appealing against the *weksel* and «a pseudo-representative» presence was not provided. The main debtor obligingly dealt with responsibility even on domiciled *weksels* for five years (art. 73, 112). The *weksel* debtor did not have the right to validate endorsements (art. 28, 99).

A setback on surety was impossible; instead, the payment (with the deduction of 6%) may be withdrawn before the *weksel*'s maturity date. A drawee, acceptor or person who issued the *weksel* could have marked the *weksel* with a special mark, obliging themselves to pay the *weksel* in full or partially before the maturity date. If the payment before the maturity date was made to an ineligible holder, the payment had to be effectuated again on the date of maturity (art. 36, 100).

Bills of exchange to bearer and domiciled *weksels* with the indication «*to bearer*,» could not be forced to be presented if a set-back on payment occurred. The drawee had 24 hours to think (art. 97); he himself had the right to appoint a drawee, the domicile person and place of payment (art. 93).

If the acceptance was erased, the *weksel* was not to be discounted (art. 95). In case the same holder receives them by mistake, or the third holder receives several discounted *weksel* duplicates, the acceptance made on several duplicates has the validity of one time obligation (art. 116).

Original endorsements made on duplicates lead to unconditional liabilities (art. 124). The following endorsements of *weksels* protested and presented to payment are not the reasons for guaranteed obligations of subsequent endorsers (art. 56, 103). The domicile person also has the right to depose debts on the *weksel* (art. 48, 102).

Local interests through the *weksel* to bearer's rate and a set-back of the redraft were not taken into account. Set-back amounts legally paid abroad were not taken into account as well (art. 53, 103).

The surety of the *weksel* must be clearly defined; in case of doubt, the sum it transfers to the *weksel* issuer (art. 57, 104) or the acceptor (art. 104). The guarantor has a *weksel* set-back, relating to those that he was a guarantor of, as well as for previous *weksel* holders (art. 63, 110).

Presence for payment on surety must be effectuated on the next working day after the protest was accepted at all addresses of third persons and

acceptors-guarantors (art. 63, 110). An unauthorized payment on surety must be proposed before the protest act is effectuated (art. 66, 110). The acceptor-guarantor had the advantage on payment on surety in comparison with other intermediate parties (art. 110). The intermediary, who was not admitted to pay on surety, may demand that it should be noted in the protest, which deprives payers their set-back right regarding those who should be released due to payment on surety (art. 62, 65, 116). The acceptor-guarantor, who did not make payment, may not demand commissions (1/4%). Instead, the payer on surety comes into the right of the previous *weksel's* holder as a legal successor (art. 110).

A notary or another legally appointed representative presented the *weksel* for payment, and if it was not effectuated by 3 p.m. of the next day, he protested the *weksel* by registering it and marking the *weksel* itself. However, the protest came into force when a special protest act was drawn up the next day, which was written word-for-word in a special book under serial number. The *weksel* had to be marked that it was protested (art. 67-70, 111). It was unnecessary to consult with the local police about it (art. 44, 102).

Only the term *weksels* could be presented for payment on the second day after the maturity date (art. 42, 102). There were no indications of how many working days should be spent on refining *weksels* (art. 72, 111). A notary should send a notification about payments in arrears to all *weksel* debtors, whose addresses are indicated on the *weksel*. All expenses should be referred to as protest expenses (art. 72, 111).

Claims on *weksels* are self-liquidating: referring to the *weksel* issuer and to acceptor, over five years starting from the date of payment; referring to drawees, endorsers and guarantors, over one year starting from the day of protest; to *weksel's* payee, over six months once the *weksel* was paid. Three years after the maturity date, no claims against drawees, endorsers and guarantors were possible. This maturity date may be interrupted only by a claim and distraintment due to bankruptcy (art. 73-77, 112-114).

Amortization was not allowed; payments of drawees, main debtors and domicile persons over a one year period were to be blocked instead; it may be added to the debt amount according to a court decision. A person who suffered a loss could appeal in court to demand the payment from surety or permission to depreciate the deposited amount; if nobody demands payment, the surety should be returned at the expiration of five years. If the *weksel* holder appears and makes an application, the term of claim should be established, upon expiration of which the block of payments should be cancelled. However, the holder has the right to sue the person who suffered losses (art. 78-81, 125).

Weksels and endorsements issued by Russians abroad, or to foreigners in Russia, are valid if they conform to the formal Russian legislation, even in cases in which they are not valid in formal matters in a foreign country (art. 83, 126). This provision was also valid for Finland and Poland (art. 85, 126).

The following provision was introduced instead of the claim of unjust enrichment (article 99): the *weksel* drawee, not provided with an acceptance, notwithstanding his waiver of protest for non-payment, bears responsibility for the *weksel* amount for one year after the maturity date. The exception was in cases where he may argue that on the maturity date, the drawer's property in the amount of the *weksel*'s sum was entitled to the drawee, or the drawer owed him no less than a certain amount. Provisions of art. 15, 26, 27, 29, 33, 42-47, 52, 53, 58, 65, 92, 93, 99 of the German Promissory Note Code were not included.

As a whole, the admission of *weksel* conclusiveness and the principle of the simplicity of its text favored its transfer many times from one person to another. This leads to the conclusion that the 1902 Statute had substantial advantages against the preceding acts of Russian exchange law, because a clear system of rules and guidelines of *weksel* operations was stipulated in it. However, despite the longlasting preparation of the Statute, it was effective only until October 1917⁸⁴⁶, when all *weksel* operations were prohibited. Thus the process of steady economic development and *weksel* circulation expansion was interrupted by World War I and the Revolution of 1917.

3.9

The Development of Credit and Weksel Operations in Western Ukraine in XIX-XX Centuries

THE DEVELOPMENT OF credit and weksel operations on the territory of Western Ukraine came about in other ways than it had in the Russian Empire and Eastern Ukraine. Due to the first division of Poland in 1772, Austria annexed the Russian voivodeship, Belza voivodeship and Western parts of Volynsky and Podolsky voivodeship⁸⁴⁷. Galicia and Bukovina were integrated to Austria and Hungary. Austria was interested in preserving West Ukrainian lands as an agricultural territory, not involving industrial development. Small industries (textile, skinnery, salt and tobacco manufactures) were the main industrial enterprises there⁸⁴⁸. Because Galicia and Bukovina were annexed by Austria, by the end of XIX century, the accounting system⁸⁴⁹ was developed and regulated in Galicia (accounting was maintained in the Ukrainian language), which facilitated the expansion of weksel operations.

At the end of XVIII century, the Austrian dynasty of Hapsburg began conducting radical reforms. In 1752, the Court Commercial Council was established. To mainstream the economic development of Austria, according to a rescript of the Emperor Joseph II, the state accounting of Galicia was established on May 13, 1773 in Lviv. In its capacity was the due diligence of the financial activity of subordinate institutions, as well as tax and income accounting (the state accounting stopped its activity on December 31, 1866; since January 1, 1867 the newly established Financial Department of Vicegerency began to exercise its functions)⁸⁵⁰.

In 1785, according to the Emperor's decree, the Central Industrial Bank was established in Vienna, which began its activity in 1786. The Bank effectuated commercial and credit operations, which facilitated expanding commercial credit, even in Western Ukraine. The expansion of credit and *weksel* operations is shown by the establishment of the Magistrate of Lviv on August 31, 1786, which the Commercial and *Weksel* Department was a part of. In 1777 in Lviv, two separate courts—commercial and *weksel*—were established⁸⁵¹ to resolve matters of dispute related to credit and *weksel* operations. The Supreme Regional Court, established in Lviv in 1773, heard *weksel* cases; in 1774, it was renamed in the Supreme Royal Tribunal⁸⁵². While sixty five *Weksel* Statutes (so called ordinations) existed in Germany for some cities, there were only nine in Austria. The *weksel* ordination for Galicia was established in 1775⁸⁵³.

As far as Poland is concerned, the first legislative acts about *weksel* operations were adopted on March 8, 1701 (the *Weksel* Law of Gdansk) and on January 27, 1758 (the *Weksel* Statute of Elblong). The influence of German exchange law is evident in the latter documents.

The first law on *weksel* operations that was applicable to Poland was the Constitution of Seim, adopted on April 13, 1775, after Poland was divided. The *Weksel* Statute was a part of the Constitution. This Statute covered not only material *weksel* law, but also procedural.

In clause 6 of par. 1 of the Constitution, it was pointed out that *weksel* debt obligations (i.e. written IOUs) may be given out, documented in compliance with the severe requirements of the exchange law. As a result, it became possible to issue an informal *weksel*—a document which was a *weksel* in its essence (an obligation to pay a certain amount without indicating the reason why this obligation occurred). This document could disagree in form with the requirements to the *weksel*, however, the provisions of exchange law covered it. Secondly, civil liabilities as loans in their essence were not *weksels* and could contain *clausula cambialis*, a *weksel* remarque indicating that the document is a promissory note or a bill of exchange. Due to this, legal sanctions stipulated by the exchange law (including a debt enforcement) encompassed these documents⁸⁵⁴.

The Polish gentry widely used *weksels* as a means of easily accessible credit. The money received in such a manner was spent on luxuriuos receptions and distractions of all kinds to buy out *weksels*. This led to a number of bankruptcies. That is why legislative acts of Seim of 1776 and 1778 restricted the *weksel*'s financial solvency, and the legislative act of 1780 deprived the gentry from using *weksels* to receive a credit.

Since 1775, after Poland was divided the third time, the exchange laws of the countries which annexed its territories—Russia, Prussia and Austria—were used there⁸⁵⁵. In the Warsaw dutchy, the Seim's decree dated March 24, 1809 established that the exchange law admitted art. 110-187 of the French *Code de Commerce*, which stipulated the existence of two legibly formalized types of documents : a bill of exchange (*lettre de change*) and so-called acknowledgements (*billet a ordre*)⁸⁵⁶. In the part of Poland

annexed by Prussia, the provisions of the all-German exchange law of 1848 ruled; on the lands annexed by Austria, the exchange law introduced by the Emperor's decree from January 25, 1850 existed. Austrian and German laws contained a list of conditions to which both *weksel* types had to correspond⁸⁵⁷.

As a whole, the following *Weksel* Statutes on the territory of Poland influenced the development of *weksel* circulation in Western Ukraine: French *Code de Commerce* (since 1807) along with the German (since 1849), Austrian (since 1850), Hungarian (since 1876) and Russian (since 1902) statutes. All these *Weksel* Statutes, with the exception of the French one, may be attributed to the German exchange law system. The German and Austrian statutes were almost identical⁸⁵⁸.

In XIX century in Western Ukraine, commodity-money turnover continued to develop. Fairs were the main form of trade. In the early XX century, over a thousand fairs were carried out annually in Eastern Galicia, Northern Bukovina and Transcarpathia. Special fairs were held in major industrial centers such as Lviv, Brody, Ternopol and Chernovtsy. Lviv was known by its fairs for its dominant wool trade; Brody and Ternopol were known for horse trade; Stanislav and Chernovtsy for linen and cattle trade⁸⁸³⁸⁵⁹. Contract fairs first appeared in XVIII century and played a significant role in the economic life of Western Ukraine, especially in Galicia. Every year, from early January to early February, fairs took place in Lviv, the major commercial center of Galicia. In 1812, eight wholesale warehouses and 222 shops existed there. The number of merchants and trade volume increased in Transcarpathia too. Foreign economic relationships of Western Ukraine expanded. Contacts with the Austro-Hungarian Empire became more and more important.

The second half of XIX century and the beginning of the XX century became a period of economic expansion for Western Ukraine, which demanded the evolution of a banking system because of the increased credit activity. In Galicia, *weksel* operations became widely used. According to P. P. Citovich, they were the reason that peasants were reduced to indigence, as they took small loans and documented them as common debt warrants⁸⁶⁰. The reason was that peasants did not understand the *weksel*'s essence and were not aware of severe punishment in case they did not repay their debts. P. P. Citovich thought that this was the case against expanding the *weksel*'s financial solvency, although S. M. Barats pointed out that peasants in Galicia had another socio-economic background, which was not related to the problem of the *weksel*'s financial solvency⁸⁶¹.

The Austrian government's customs policy facilitated the entrance of Austrian commodity to national regions, while at the same time, it created artificially overstated customs barriers aimed at reducing the import of West

Ukrainian goods. This policy resulted in the economic underdevelopment of Western Ukraine, which served as a final goods sales market⁸⁶². However, in the 1870-1880s, the oil industry developed there. At the end of XIX century, foreign capital came to invest in the oil industry in Western Ukraine. First Austrian, then German, English and American companies arrived (in 1905-1906, more than 50 joint-stock oil companies were established), which increased the need for credit institutions.

The Austro-Hungarian financial capital led the credit system of Western Ukraine. Trade and industry crediting by means of *wekssels* was effectuated in two ways—parallels and competitive—through the Austria-Hungary bank and private joint-stock banks. The Austro-Hungarian bank was established in 1816 to regulate the Austrian monetary system⁸⁶³. In 1900, the bank's capital was 210,000,000 kronas. Twelve branch offices existed in Galicia and Bukovina. It accepted deposits and carried out operations of mortgage lending, taking *wekssels* into account⁸⁶⁴.

Since the Austro-Hungarian issuing bank was the central credit institution of the Empire, private commercial and several land banks of Western Ukraine kept a part of their assets in its central office, branch offices and bank departments. At that time, branch offices in Galicia and Bukovina carried out operations such as mortgage lending, *weksel* discounting, accepting deposits and financing major landlords. The Austro-Hungarian issuing bank, the major Austrian bank, took only *wekssels* related to trade operations. Private banks effectuated a more liberal crediting policy, and discounted *wekssels* relating to financial credit.

While the Austro-Hungarian bank discounted *wekssels* only on a special bank interest, private banks took them on a free discount rate. When the Austro-Hungarian bank's interest was lower than the official discount rate, it was inferior to private banks in *weksel* operations volume. This balance item growth rate (although it was subject to different economic reasons) proves the emerging importance of banks in the process of transforming Austria from an agricultural state to an industrial one. The Industrial Bank in Lviv was an integral part in the banking system of West Ukrainian lands. The Bukovina Regional Bank was active, loaning against grain, land security, one name papers and performing other operations.

Credit and *weksel* operations spread much on the territory of Poland after 1918, when it became independent. Even peasants from the most economically underdeveloped regions used *wekssels*. During the economic crisis of 1930-1935, *weksel* debts led to the bankruptcy of many peasants⁸⁶⁵. To regulate legislative acts, a commission for codifying civil law was established on June 3, 1919 in Poland. Codifying stipulated the assimilation of German and French exchange law systems, effective in Poland by that time. These measures resulted in the unification of the exchange law, which became one the first unified systems of private law in Poland.

The subcommission for trade law headed by a professor S. Vrublevsky began its activity in June 1921; the drafts of the *weksel* statute were reviewed at the meetings

held from June 22 to June 28, 1921⁸⁶⁶. The draft of the *weksel* legislative act was developed based on a professor A. Dolinsky's report, who was guided by the unified exchange law elaborated at international conferences in Hague in 1910 and 1912. The draft was adopted in the form of a convention dated July 23, 1912, which was not ratified due to the start of World War I. The project's discussion continued in Warsaw in February 1922 and Krakow in November 1922. On April 9, 1923, the draft of the *weksel* statute was laid before the Seim and the Senate. It was finally adopted in 1924⁸⁶⁷. The *Weksel* Statute of Poland, effective in Western Ukraine, came into force on January 1, 1925.

The exchange law conference, which took place in Geneva on June 7, 1930, adopted three international conventions. The representatives of Poland, Ya. Sulkovsky and Ya. Namitnevich, participated in the conference. At the suggestion of Polish and Italian delegations, an attempt was made to settle an issue of *weksels in blanco* (art. 10 UEL). Since the delegation of France had a rooted objection to legislative adoption of *weksels* due to the risk of abuse, art. 3 was inserted in Appendix II to the convention, according to which any party had the right not to insert art. 10 UEL in the exchange law of its country. This article was elaborated by Ya. Sulkovsky, but in UEL, only a part of his proposal was used. The law dated April 28, 1936 expanded the UEL on the territory of Poland⁸⁶⁸.

At the end of XIX century in Western Ukraine, usury was widely spread. Peasants were deprived of taking credits on favorable terms (the credit rate reached 20%, which was much higher than in other European countries)⁸⁶⁹. The only resolution for this situation was the foundation of banks for peasants and aid funds.

In 1868, the Peasant bank was established in Galicia. It issued loans to peasants of Bukovina on the security of lands at the rate of 12% annually. In 1909, the Ukraine Land Mortgage Lending Bank was established (the bank's registered capital was 1,000,000 kronas) ; it invested in commercial and industrial enterprises and issued *weksels*.

In the early XX century, the importance of Ukrainian credit institutions greatly increased, particularly the importance of the Ukraine Land Mortgage Lending Bank. Many Ukrainian landlords, traders and industrialists were its clients. The bank carried out credit operations on the security of lands and immovables, issued *weksels* and invested funds in different commercial and industrial cooperative businesses. This bank became the main source of crediting for West Ukrainian trade, production and cooperative businesses⁸⁷⁰. Loans on the security of lands, grain and promissory notes were offered by the Bukovina Regional Bank.

Since in the early XX century, Ukrainian cooperation was not supported by the state, it was forced to use private banks' credits. Although in the 1920s, the maximum allowed interest rate of credit loans in Poland was 12% annually (State Banks offered

institutions of Poland credit at 10% and lower), this cheap credit was not accessible for Ukrainian cooperative businesses⁸⁷¹.

In connection with the inflation the credit cooperative started its activities later than other forms of cooperation. It was organized on two levels. The lower level of credit cooperation represented Ukrainian banks and lending institutions (in Western Ukraine they were called *raiffeisenki* named after Frederick William Raiffeisen, a founder of credit cooperative institutions in Germany).

In addition to banks, credit unions also lent credits. Their apparition was due to the total development of cooperation. In 1898, the Regional Credit Union was established (which united the major part of credit cooperative businesses). Credit cooperative businesses spread not only in Galicia, but also in Bukovina, where the first Ukrainian lending institutions (*raiffeisenki*) appeared in 1889⁸⁷².

At first, *weksels* were not used in these cooperative businesses due to the protest of peasants, who considered *weksels* dangerous for them. Loans were granted on the security of special notes (scripts) without guarantors and other formal procedures, therefore credits became cheap and accessible for peasants. The use of *weksels* was eventually permitted⁸⁷³.

The main problem of rural credit cooperative businesses was shortage of funds. That is why cooperative movement activists underlined the importance of establishing a special peasant bank, which could lend not only peasants, but also to other lending institutions at low interest, gaining profit from the difference in the rate of securities, including *weksels*. In 1905, in compliance with the Seim's decree, the Regional Bank was established, whose credit rate was only 4.5%. Credits were allotted on the security of immovables for a period ranging from 10 to 51 years.

In 1903, the union of rural *raiffeisenki* was established in Chernovtsy, named the Peasant Lending Institution (the President of the union who united 174 credit cooperative businesses was S. Smal-Stotsky, professor of University of Chernovtsy). The banks of Ukraine were municipal credit cooperative businesses because they did not carry out complicated bank operations: they allotted short term and long term credits to citizens of cities and villages by using *weksels*.

Credit lending institutions (*raiffeisenki*) were created in big villages mainly to service peasants, as distinct from Ukrainian banks who covered less territory. The admission fee was low and consisted of 10 zlotys. By the end of 1937, 543 *raiffeisenki* and 114 Ukrainian banks existed in West Ukrainian lands. The Central Bank was the governing body of the credit cooperative businesses of Western Ukraine. The Central Bank steadily converted into the central lending institution of Ukrainian cooperation. The Bank financed not only crediting, but also procurement and distribution activity. It issued *weksels* and invested in different commercial and industrial cooperative businesses⁸⁷⁴. Credit and financial institutions of Western Ukraine were liquidated only after the West Ukrainian lands joined the Ukrainian Soviet Socialist Republic. Thereafter, it was impossible to carry out *wksel* operations.

3.10

The Weksel in the Period of New Economic Policy (NEP)

AFTER THE REVOLUTION of October 1917, when the policy of military communism was set up, weksels as well as other securities were liquidated in order to liquidate all private trade. Hence why legislative acts of that time in which weksel operations were mentioned prescribed their prohibition. Thus on October 13, 1919, a decree of the Commissar Council of the Russian Soviet Federal Socialist Republic, *On Enforcement of Weksels Possessed by National Banks*, was issued. This directive resolution abolished the weksel's time limitation, the possibility of enforcement on weksels, and all other legal provisions of the exchange law. The persons who possessed weksel obligations became debtors of the state treasury.

When the new economic policy (NEP) came in effect, the backtracking toward a market economy began and commodity-money relationships were revived. The market and commodity-money circulation relationships defined the function of enterprises and business units, i.e. economic agents. Under these conditions, the system of commercial crediting was built, and weksels became its prime tool⁸⁷⁵; the volume of weksel operations gradually increased.

As a result, new Weksel Regulations were approved on March 20, 1922, which contained 38 articles applying to the territory of the RSFSR and the USSR⁸⁷⁶. The basis of the regulations was the 1902 Statute. The new Weksel Regulations consisted of two parts: about promissory notes and bills of exchange. Provisions of the 1902

Statute remained, such as a *weksel* remittance, a full payment of the *weksel*'s sum, the abstractedness of a *weksel*'s liability and the prohibition of days of grace.

As distinct from the 1902 Statute, art. 16 of the *Weksel* Regulations stipulated the essence of a bill of exchange as a proposal to a third person to take *weksel* liability, while cl. 86 of the 1902 Statute considered the essence of a bill of exchange as an order. The provisions underlined *weksel*'s advantages during the period of NEP, as well as the mutual liability of the *weksel* maker and all parties who participated in *weksel* operations against the *weksel* holder. The Regulations took due account of *weksel* circulation features in the USSR during the 1920s, especially the fact that promissory notes issued by state enterprises, institutions and cooperative businesses prevailed⁸⁷⁷.

It was supposed that payments against *weksels* had to be made in rubles. If a *weksel* was issued in foreign currency, then the *weksel*'s sum had to be converted into rubles at the official rate. The payment against the *weksel* should be made in the place of issuing, if another place was not indicated in the *weksel* (art. 5).

The Regulations included all necessary legal procedures to maintain *weksel* circulation. In compliance with the *weksel*'s endorsements, it could be transferred an unlimited number of times, unless there is an indication in the *weksel*'s text that it was issued in the name of a certain person (art. 7). The person who transferred the *weksel* via endorsement took collective and joint responsibilities for its payment along with other persons who signed the *weksel*, except the cases when the words «*without recourse to me*» were added to the text of endorsement (art. 8, 9, 14)⁸⁷⁸.

The *weksel* holder had the full right to make a request to any person who signed the *weksel* to pay it, notwithstanding the order of *weksel* transferring according to endorsements. Thus in *weksel* operations during NEP, the principles of common liability and judicial enforcement of debts on protested *weksels* were applied.

Among the *Weksel* Regulations' deficiencies, an insufficient detailing may be indicated. According to B. F. Movchanovsky, the *weksel*'s financial solvency only had historic significance at that time because «... soviet exchange law does not have such limitations. The soviet legislation is not aware of a special *weksel* financial solvency, thus those who entered into contractual liabilities may be bound by a *weksel*»⁸⁷⁹.

Since it was admitted that the right to accept a *weksel* liability was granted to all *sui juris* physical persons, as well as legal entities having the right to enter debt relations, the right to undertake *weksel* liabilities was spread over state bodies despite the fact that they had a routine cost-based budgeting. The only condition was a formal independency of these bodies from the state as subjects of a legal capacity⁸⁸⁰.

In the mid 1920s, banks were focused on preserving *weksel* operations. A number of articles were published in media concerning the improvement of soviet *weksel* circulation and the *weksel* circulation system as a whole. *Weksel* circulation was so highly active that the codification of the exchange law, effective on the territory of the RSFSR and the USSR, became important. As V. M. Gordon underlined, although

effective laws existed in the RSFSR and the USSR, several legislative acts were different by their content. This resulted from the Wechsel Regulation of 1922, which was reviewed several times and amended by on-going decrees⁸⁸¹.

The Instruction adopted by the Commissar Council of Finance on discounting weksels and special accounts in the State Bank offices came into force on January 1, 1926. This instruction contained many perspective provisions, but it was not valid for an extended period of time not only due to low weksel discipline, but also due to changes in the economic policy as a whole.

At the end of the 1920s, a command-and-control style leadership spread in the economy. As a result, commercial credits for private enterprises were abolished and state enterprises were supported. In case of non-payment against a weksel, state enterprises were not subject to a protest procedure and received new subventions from the state. In 1927-1928, the tendency towards strict cost-based budgeting and donating intensified. This resulted in steady liquidating of enterprises' economic self-reliance in their planning of allocating material and financial resources.

As S. M. Kiselev noted in 1927, if «in the beginning of NEP, the restoration of weksel circulation in our country was reasonable, as it was a practical, efficient method of weksel circulation during that transition period. However, at present, as the socialized sector of the economy has developed, the weksel has lost its profitability.»⁸⁸² In addition, even in capitalist economies, along with the development of the banking system, the system of mutual accounts was steadily shifting from weksels to other technical methods developed by banks for it.

Economic freedom was attacked, which resulted in the liquidation of private ownership. To limit the economic and financial self-reliance of enterprises, it was necessary to liquidate the weksel circulation and introduce a state cost-based budget in compliance with price ceilings.

In 1928, the discussion about the weksel's essence and its significance in the USSR's planned economy began⁸⁸³. It anteceded the apparition of the State Bank project aimed to complete liquidation of commercial credit (as well as the weksel circulation) in order to converting establish another form of crediting, customer crediting (private label crediting).

The necessity to abolish weksel operations may be explained by fast developing socialist principles in the national economy, as well as a high level of its organization. Those who supported the credit reform and weksel abolishment believed that the main disadvantage of the soviet weksel was the fact that «after apparition, it was almost immediately sent to a bank to be discounted.»⁸⁸⁴ According to the data on Leningrad, the majority of weksels had maturity dates from 1 to 15 days. Half of the weksels had maturity dates from 1 to 5 days, i.e. the minimum term needed for receiving and transferring a weksel⁸⁸⁵.

Based on the data of weksel usage in Siberia, M. G. Ginzburg stated that the practice of issuing weksels as accounting documents for cooperative societies' directors was widely spread. These weksels were issued by the society itself on

behalf of cooperative businesses (under a power of attorney). These weksels were sent to a bank by third parties, «in most cases they went to bank from societies themselves in due accounting procedure.»⁸⁸⁶ Issuing weksels on behalf of and under a power of attorney for cooperative businesses was significant there. Such events were considered by credit reform supporters as a sign of an unsatisfactory condition of weksel circulation in the USSR. Supporters affirm that the weksel severity was impossible under socialism, because it could have resulted in selling an enterprise in default.

As S. M. Kisilev wrote, «the weksel functions as a means of payment when the market is favorable; when more or less significant alterations of the market's condition take place, the weksel's default as a means of payment becomes obvious.» That is why, «while organizational forms of the capitalist system financially deepen, the system develops higher organized forms of credit.»⁸⁸⁷ Kisilev came to a conclusion that while the role of private capital in the soviet economy decreased, weksel usage became impractical.

During the discussion, it was admitted that it was not necessary to use weksels in the USSR because they were destructive. The abstractedness and universality of the weksel were highly criticized, which resulted in frequently using weksels in business activities during the 1920s as a means of payment in different economic relations that were irrelative to the weksel's essence. The weksel's abstractedness (and, as a result, the abstractedness of money credit) was admitted irrelevant to the essence of the planned economy in the USSR. As a solution, it was proposed to deprive the weksel of its abstractedness, create new types of weksels which related to existing forms of economic operations, implement the bill of exchange, etc.⁸⁸⁸

Credit reform projects encountered resistance from many business organizations, which understood that the proposed reform would limit their economic independence.

The number of supporters of credit reform steadily increased, as it liberalized economy planning and simplified the complicated system of mutual accounts. As Yu. E. Shenger underlined, this reform had to become a significant step towards planning the reinforcement of the USSR's national economy, as well as an important stage in transforming of the State Bank into a united financial settlement center⁸⁸⁹.

One of the main backgrounds of the State Bank's proposals to liquidate commercial crediting and satisfy clients' demands by financing them using bank's funds was that the bank could not completely control the use of money lent due to the weksel's abstractedness and crediting through the intermediary (the presenter of a weksel). In such conditions, the bank's capacity in planning and regulating economic activities of enterprises was limited, which contradicted its role as the major bank in the USSR⁸⁹⁰. The weksel not only became impractical, but also lost its function as a credit circulation regulating tool and a means of security. The weksel was «frequently a negative instrument in our circulation, which retarded the credit circulation in the state-controlled economy.»⁸⁹¹

The discussion resulted in the government's resolution on credit reform. The Regulations of the Central Executive Committee and Commissar Council of the USSR from January 30, 1930 finally liquidated commercial crediting and *weksel* circulation. Art. 1 of the Regulations provided for the following: «It was prohibited for state entities, cooperative enterprises and semipublic joint-stock companies without foreign capital to sell goods and render services to each other on credit. This credit is to be replaced by bank crediting only.»⁸⁹² The State Bank was tasked to implement the credit reform. It was supposed that it would start from April 1, 1930 and finish in the third quarter of that year.

The credit reform carried out in compliance with the Regulations was designed to intensify socialist elements in the planned economy due to planning widely used in the economy⁸⁹³.

Thus in 1930, the commercial credit was abolished, and *weksels* were no longer its most important instrument. Assuming that the use of the bills of exchange in foreign trade was subject to credit practice of the states with market economies, on November 25, 1936, the USSR joined the Geneva Convention on the bills of exchange and promissory notes signed on June 7, 1930. The Decree of the Central Executive Committee and Commissar Council of the USSR № 104/1341 dated August 7, 1937 adopted the Regulations on Bills of exchange and Promissory Notes, which in its essence repeated the text of the Unified Exchange Law, but only applied it to foreign trade. In the USSR's domestic turnover, *weksels* were not used until the 1990s.

AFTERWORD

THE SIMPLEST FORMS of written debt obligations appeared independently in different countries and in different eras, wherever the trade and commodity-money turnover were highly developed. The economic background of the bill of exchange apparition originated a long time ago, along with long-distance trade, where great sums of money were transferred with a high risk of loss.

The first debt obligations known to us appeared in Babylonia. The most developed institutions of such obligations beyond Europe were in China (since VIII century) and in the Arab Caliphate (between X and XIII centuries). Both ancient prototypes of promissory notes, and non-European forms of written debt obligations resembled to the classic European-type promissory note. However, they were founded on other systems of law and exchange, which explains the differences of these written debt obligations with the European-type bills.

As far as the European bill of exchange is concerned, it appeared in Italy in the XII century. In different European regions, countries had their own national trade customs, thus written debt commitments each had peculiarities and unique features: liability letters appeared in the North of Europe, England, and the cities of Hanseatic League; mamrans, which appeared under the influence of Jewish merchants and expanded in Poland and Ukraine; obliques of Hetmanate and debt kabalas in Russia. In some cases, these credit instruments similar to the *weksel* were eventually superseded by the unified *weksel* (in Ukraine, as well as in Russia, this national specificity was reflected by prevailing promissory notes). These specificities developed without affecting England, which resulted in their formation a separate and original system of Anglo-American exchange law. Presently, in the era of globalization, the English system of exchange has a significant influence on the European system of continental exchange law.

At the end of XX century, when the post-industrial epoch began, the *weksel* was further evolving, which resulted from the specificities of the post-industrial economy: production, consumption and financial transactions became global. The development of electronic telecommunications innovated banking business and payment methods, which led to growing use of digitally signed electronic documents. New forms of debt obligations, such as commercial papers, which can be considered as further evolution forms of the *weksel*, became more and more important.

Although certain discrepancies between commercial papers in the USA and in the EU have been preserved, the integration of these markets has become increasingly necessary as globalization and international trade reach levels that were never before seen.

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ENDNOTES

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- 575 «Pskov Charter» further improved the juridical perceptions about credit operations. The development of these perceptions in «Pskov Charter» exceeded the notions of «Prostrannaya Russkaya Pravda» as much as the last one differed from the first version of «Russkaya Pravda». (Dovnar-Zapol'skij M. V. Istorija russkogo narodnogo hozjajstva: V 2 t. T. 1.–K., 1910.–S. 193-194).
- 576 Udincev V. A. Izbrannye trudy po trgovomu i grazhdanskomu pravu.–M.: AO «Centr JurInfoR», 2003.–S. 44-45.
- 577 Rozhkov N. A. Russkaja istorija v sravnitel'no-istoricheskom osveshchenii (Osnovy social'noj dinamiki): V 4 t. T. 2.–2-e izd.–M.–L.: Kniga, 1928.–S. 302; Nikitskij A. I. Istorija jekonomicheskogo byta velikogo Novgoroda.–M.: Universitetskaja tipografija, 1893.–S. 94.
- 578 Aristov N. Promyshlennost' drevnej Rusi.–SPb., 1866.–S. 206.
- 579 Horoshkevich A. L. Torgovlja Velikogo Novgoroda s Pribaltikoj i Zapadnoj Evropoj v XIV–XV vekah.–M.: AN SSSR, 1963.–C. 34.
- 580 In particular, this case is mentioned in the second skra, art. 53. (Kulisher I. M. Istorija russkogo narodnogo hozjajstva: V 2 t. T. 1.–M.: Mir, 1925.–S. 186-187).
- 581 Aristov N. Promyshlennost' drevnej Rusi.–SPb., 1866.–S. 214, 248.
- 582 To preserve its monopoly, Hanse impeded the independent sea trade of Novgorod. The fine of 50 marks, a tremendous one at that time, was fixed up in skra for anyone who would favour the Flemish, the Englishmen and the Lombards to penetrate to Novgorod. Hansa's concern about foreigners penetrating to Novgorod and Pskov, and, consequently, the breakdown of the Hansa's trade monopoly was exaggerated, because the facts of the presence in Novgorod of foreign merchants, apart the Germans, are not known. In the early 15th century the Dutchmen were trying to form trade contacts with Novgorod, but these attempts were criticized at the congress of Livonian cities in 1434. (Kulisher I. M. Istorija russkogo narodnogo hozjajstva: V 2 t. T. 1.–M.: Mir, 1925.–S. 187).
- 583 In foreign states monasteries were the most secure places, where merchants and goods were protected from robbery. For that reason the ancient Russian merchants created their own trade market in Constantinople at the monastery of St. Mamma.
- 584 In 1229 a trade agreement between German merchants and Mstislav Davidovich, Prince of Smolensk, was signed. One can see in this document a detailed consideration of all civil and criminal law matters which could arise during trade transactions. (Dovnar-Zapol'skij M. V. Istorija russkogo narodnogo hozjajstva: V 2 t. T. 1.–K., 1910.–S. 158-159).
- 585 Dovnar-Zapol'skij M. V. Istorija russkogo narodnogo hozjajstva: V 2 t. T. 1.–K., 1910.–S. 163-165.

- 586 Even in the XVII century A. L. Ordyn-Nashokin proclaimed the idea typical for Russia (which could never appear in Western Europe) that «the national economy» must be the principle subject to be administrated by the state. (Kljuchevskij V. O. *Istoricheskie portrety*.—M.: NPO «Jetalon», 1991.—S. 132, 133).
- 587 According to V. A. Udintsev, Novgorod and Pskov lost steadily their trade significance, in virtue of Moscow tsars' policy aimed to subjugate these hazardous commercial rivals. When the principal role in the trade passed from Novgorod to Moscow, the whole system of trade routes changed. (Udincev V. A. *Izbrannye trudy po trgovomu i grazhdanskomu pravu*.—M.: AO «Centr JurInfoR», 2003.—S. 97).
- 588 Udincev V. A. *Izbrannye trudy po trgovomu i grazhdanskomu pravu*.—M.: AO «Centr JurInfoR», 2003.—S. 105-106.
- 589 It is known that at the times of Uzbek Khan (1314-1341), a large settlement of merchants from Russia existed in Sarai, the Golden Horde's capital. (Vernadskij G. V. *Mongoly i Rus'*.—Tver': Lean; M.: Agraf, 1999.—S. 350–351).
- 590 «Moscow is beholden to khans for its grandeur», M. M. Karamsin wrote in «History of Russia». In the 20-s of the XX century N. Troubetskoy underlined that it was impossible to understand the Muscovy's specificity without taking in consideration of the fundamentals of the Mongols Empire's state structure. (Vernadskij G. V. *Kievskaja Rus'*.—Tver': Lean; M.: Agraf, 1999.—S. 340–341).
- 591 Vernadskij G. V. *Mongoly i Rus'*.—Tver': Lean; M.: Agraf, 1999.—S. 18.
- 592 Explanatory Dictionary of the Russian living Language by V. Dal defines the term «kabala» as a written debt obligation, a debt letter. (СловаРи В. Даля.—). h.p: // www.academic.ru/misc/enc2p.nsf/ByID/NT0003D8C6
- 593 However, V. O. Kluchevskiy noted that the word «kabala», this was used for a special form of the acknowledgement of debt in Russia, is derived from Hebrew. N. O. Neresov mentions the same citing the opinion of V.N. Tatishev, a well-known Russian historian of the XVIII century, and the book «Pskov Charter», the second edition of 1796, p. 15, note 6. (Neresov N. O. *Izbrannye trudy po predstavitel'stvu i cennym bumagam v grazhdanskom prave*.—M.: Statut, 2000.—S. 191, prim. 1).
- 594 In 1275 another census of Russian population was conducted (Ibid, p. 849).
- 595 Ibid, p. 1162. It is known that the Tatars used paper and leathern money made on the model of Chinese money at that time (ibid, p. 1232).
- 596 The debt obligation may be considered as the most recent institution in the ancient Russia's laws. In «Russkaya Pravda» the attention was focused on it among the other forms of agreements, a freedom of a debtor (zakup) was a pledge. However, the notion «kabala» appeared in Muscovy much later.
- 597 Vladimirsij-Budanov M. F. *Obzor istorii russkogo prava*.—Rostov n/D.: Feniks, 1995.—S. 613.
- 598 Colov'ev S. M. *Istorija Rossii s drevnejshih vremen: V 8 t. T. 1-5. Kn. 1.—SPb.: Izd-vo tovarishchestva «Obshchestvennaja pol'za», 1900.—S. 1251-1252.*
- 599 It is necessary to mention an extraordinary type of document, first mentioned in the «Law book» (1497), cl. 55. These are so called «poletnye gramoty», letters of

- settlement of debt on instalment plan, «po letam», i.e. every year. Poletnye gramoty were given only in case when a debtor could not pay his debt because of objective causes beyond his reasonable control, such as acts of God, thieves attacks etc. (Rossijskoe zakonodatel'stvo X–XX vv: V 9 t. T. 2. Zakonodatel'stvo perioda obrazovanija i ukreplenija Russkogo centralizovannogo gosudarstva.–M.: Jurid. lit., 1985.–S. 87-88).
- 600 Barats S. M. Kurs weksel'nogo prava.–SPb.: T-vo «Obshchestvennaja pol'za», 1893.–S. 676-678; Demkiv'skij A. V. Wexsel'na sprava: Navch. posibnik.–K.: Libid', 2003.–S. 60.
- 601 Rossijskoe zakonodatel'stvo X–XX vv: V 9 t. T. 3. Akty Zemskih soborov.–M.: Jurid. lit., 1985.–S. 312-313.
- 602 Cl. 78 and 82 describes the kabala. In the last one an attempt to distinguish the debt agreement and the work contract, i.e. simple debt kabala and servicing kabala, was taken. In the «Law book» of 1497 unlike the «Law book» of 1550, the statements of kabala act are absent and witness a steady formation of the servicing kabala institution in the first half of the 16th century. (Rossijskoe zakonodatel'stvo X–XX vv: V 9 t. T. 2. Zakonodatel'stvo perioda obrazovanija i ukreplenija Russkogo centralizovannogo gosudarstva.–M.: Jurid. lit., 1985.–S. 52).
- 603 www.kolibry.astroguru.com/01271010.htm.
- 604 Kljuchevskij V.O. Kurs russoj istorii. Lekcija XLIX. www.magister.msk.ru/library/history/kljuchev/kllec49.htm.
- 605 Later, during the XVII century, the servicing kabala lost its previous credit meaning and fell into a formal agreement which was accompanied with a debt commitment providing for converting free persons to enslaving serfs.
- 606 Tam zhe, t. 3, s. 321-433. Sluzhilaja kabala podrobno rassmatrivaetsja v Glave XX «Sobornogo ulozhenija», v chastnosti, v stat'jah 7, 8-15, 19 (gde detalizirovalsja process oformlenija sluzhiloj kabaly), a takzhe v st. 39-40, 103 (Tam zhe, t. 3, s. 386).
- 607 «Decree on drawing up kabala acts» 30. 01. 1701. (Ibid, v. 4, p. 281-283).
- 608 It might be S.M. Soloviev who was one of the first researches considered the kabala as a weksel prototype. (Colov'ev S. M. Istorija Rossii s drevnejshih vremen: V 8 t. Kn. 1. T. 1-5.–SPb.: Izd-vo tov-va «Obshchestvennaja pol'za», 1900.–S. 1251-1252).
- 609 Citovich P. P. Kurs weksel'nogo prava.–K.: Tip. I. N. Kushnereva i K., 1887.–S. 23.
- 610 Nersesov N. O. Izbrannye trudy po predstavitel'stvu i cennym bumagam v grazhdanskom prave.–M.: Statut, 2000.–S. 191.
- 611 Vladimirskij-Budanov M. F. Obzor istorii russkogo prava.–Rostov n/D.: Feniks, 1995.–S. 567.
- 612 The term of document «pamyat'» may be compared with the Jewish bill «mamran», derived from Latin «memorem», a reminder.
- 613 These documents are stored in the Central National Archives of Ancient Acts (hereinafter referred to as CNA), in the holding of ancient cases of prikaz. (CGADA, f. 141, op. 1-3).
- 614 Demkin A. V. O formuljarah zaemnyh «kabal» i «pamjatej» pervoj poloviny XVII v. // Sovetskie arhivy.–1985.–№5.–S. 36.

- ⁶¹⁶ CGADA, f. 141, op. 2, 1645 g., d. 19, l. 76.
- ⁶¹⁷ Demkin A. V. O formuljarah zaemnyh «kabal» i «pamjatej» pervoj poloviny XVII v. // *Sovetskie arhivy.*—1985.—№5.—S. 35-37.
- ⁶¹⁸ Barats S. M. Zadachi veksel'noj reformy v Rossii.—SPb.: Tip. Stasjulevicha, 1896.—S. 27-30.
- ⁶¹⁹ Ibid, p.31-32. In the XIX century it is known numerous examples of enslaving Ukrainian peasants with the aid promissory notes that functioned as the previous antecedent debt kabala acts (Ibid.67-73).
- ⁶²⁰ Due to the lack of money in the turnover, the commercial loan and the banking industry did not develop for long time in Russia, and Russian merchants knew nothing about those credit functions, on which the commerce in Western Europe was developing. (Ionichev N. P. Vneshnie jekonomicheskie svjazi Rossii (IX—nachalo XX veka).—M.: Aspekt-press, 2001.—S. 78).
- ⁶²¹ Kulisher I. M. Ocherk istorii russkoj trgovli.—Pg.: Atenej, 1923.—S. 130–133.
- ⁶²² Tihomirov M. N. Drevnjaja Moskva XII–XV vv. Srednevekovaja Rossija na mezhdunarodnyh putjah XIV–XV vv.—M.: Mosk. rabochij, 1992.—S. 79-80, 83.
- ⁶²³ Ibid, p. 235.
- ⁶²⁴ According to Ĭ. Gruneveg, who were in Moscow in 1585, he walked on the city during the day and collected debts in small shops, and that proves the development of trade on credit. (Horoshkevich A. L. Martin Gruneveg o Moskve 1585 goda // Rossija i Germanija. Vyp. 2.—M.: Nauka, 2001.—S. 24).
- ⁶²⁵ Rozhkov N. A. Russkaja istorija v sravnitel'no-istoricheskom osveshchenii (Osnovy social'noj dinamiki): V 4 t. T. 4. Dvorjanskaja revoljucija v Rossii.—3-e izd.—M.—L.: Kniga, 1928.—S. 229.
- ⁶²⁶ Ionichev N. P. Vneshnie jekonomicheskie svjazi Rossii (IX—nachalo XX veka).—M.: Aspekt-press, 2001.—S. 134-135.
- ⁶²⁷ Istoriya Pol'shi: V 3 t. T. 1.—M.: Izd-vo AN SSSR, 1954.—S. 108, 151, 154.
- ⁶²⁸ Horoshkevich A. L. Martin Gruneveg o Moskve 1585 goda // Rossija i Germanija. Vyp. 2.—M.: Nauka, 2001.—S. 22-23, 28.
- ⁶²⁹ Unfortunately, the Armenian community in Lvov did not leave behind a fairly detailed archive of documents that would allow us tracing the specificity of credit operations of Armenian merchants. The recent research of Ĭ. Kapral, filled with historical evidences, but unsatisfactory by its socio-economic conclusions, evidences how difficult is to educate the history of trade of Lvov's national communities. On 440 pages of this book there is almost nothing about commercial transactions of Armenian and Italian communities that survived in Lvov due to this activity. (Kapral' M. Nacional'ni gromadi L'vova XVI–XVIII st.—L'viv: Piramida, 2003.—S. 22).
- ⁶³⁰ According to data of the early XVIII century, there were 80 Jewish hucksters and 30 vekslarzow and 30 usurers in Lvov (Ibid, p. 88, 221, 273).
- ⁶³¹ Brodel' F. Material'na civilizacija, ekonomika i kapitalizm XV–XVIII st.: V 2 t. T. 2. Igri obminu.—K.: Osnovi, 1997.—S. 131.

- ⁶³² Karpov S. P. Ital'janskie morskije respubliki i Juzhnoe Prichernomor'e v XIII–XV v.: problemy trgovli.–M.: Izd-vo MGU, 1990.–S. 204–206.
- ⁶³³ Bill of exchange operations were used not only Italian, but also Greek merchants of the Black Sea region, although the volume of these transactions they held was lower (Ibid, p. 207–208; 287).
- ⁶³⁴ Thus, in 1482 Damslar, a «raytsa» from Lvov took from Stan Zhigmuntovich, a merchant from Krakow, the woolen cloth priced at 110 zlotys, and was obliged to pay it by neats at the fair in Peremyshl'(Re-printne vidannja: K.: Naukova dumka, 1995).–S. 44, 68).
- ⁶³⁵ Vernadskij G. V. Rossija v srednie veka.–Tver': Lean; M.: Agraf, 2000.–S. 96.
- ⁶³⁶ Ljubavskij M. K. Ocherk istorii Litovsko-Russkogo gosudarstva do Ljublinskoj unii vkljuchitel'no.–2-e izd.–M.: Moskovskaja hudozhestvennaja pechatnja, 1915.–S. 116–117.
- ⁶³⁷ Skomorovich I. G., Reverchuk S. K., Malik Ja. J. ta in. Istorija groshej i bankivnictva.–K.: Atika, 2004.–S. 133.
- ⁶³⁸ Kutsheba S. Ocherk istorii obshchestvenno-gosudarstvennogo stroja Pol'shi.–SPb.: Izd.A.S. Suvorina, 1907.S.32–33.
- ⁶³⁹ Lanovik B. D., Matisjakevich Z. M., Matejko R. M. Ekonomichna istorija Ukraïni i svitu.–K.:Vikar, 2001–S.224.
- ⁶⁴⁰ Skomorovich I. G., Reverchuk S. K., Malik Ja. J. Istorija groshej i bankivnictva.–K.: Atika, 2004.–S. 133, 214–218.
- ⁶⁴¹ Rybarski R. Handel i polityka handlowa Polski w XVI stuleciu.–Poznań, 1928.–S. 246, 248.
- ⁶⁴² Sas P. I. Feodal'nye goroda Ukrainy v konce XV–60-e gody XVI v.–K.: Naukova dumka, 1989.–S. 212–217.
- ⁶⁴³ Dovnar-Zapol'skij M. V. Gosudarstvennoe hozjajstvo Velikogo Knjazhestva Litovskogo pri Jagellonah: V 2 t. T. 1.–K.: V tipografii un-ta sv. Vladimira, 1901.–S. 379–380.
- ⁶⁴⁴ Lessius, L. De iustitia et iure caeterisque virtutibus cardinalibus libri IV: ad 2. 2. D. Thomae, a quaest. 47. usque ad quaest. 171 (auctore Leonardo Lessio, Societatis Iesu, S. Theol. in Academia Louaniensi professore).–Louanii: Ex officina Ioannis Mas., Typ. Iur., anno 1605.
- ⁶⁴⁵ One can remember the text-book «Text-book of law of the Pope and royal» (1537) by Ivan Tourobinsky-Rutenets who was born in Ukraine, graduated from Krakow University and later became a professor of law and Head of the University. Besides, it is known that an example of the book of Luca Pacioli «Treatise about highlights and records», published in 1494 in Venice, which contained the information of bills, even in the 16th century landed up in Kiev, where it was stored in Jesuit collegium until 20-s of the XX century. (Sokolov Ja. V., Terehov A. A. Ocherki razvitija audita.–M.: ID FBK-PRESS, 2004.–S. 106).
- ⁶⁴⁶ The importance of customs based law was underlined by a Ukrainian jurist F. Chuykevich, who, between 1750 and 1758, was codifying the law. (Mesjac V. D.

Istorija kodifikacii prava na Ukraine v pervoj polovine XVIII veka.–K.: Naukova dumka, 1963.–S. 120; Tkach A.P. Istorija kodifikacii dorevoljucijnogo prava Ukraïni.–K.: Naukova dumka, 1968.–S. 29).

647 Jakovenko N. M. Paralel'nij svit. Doslidzhennja z istorii' ujavlen' ta idej v Ukraïni XVI–XVII v.–K.: Kritika, 2002.–S. 85.

648 Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII–pershoï polovini XVII v.–K.: Naukova dumka, 2001.–S. 213–214.

649 Statuti Velikogo knjazivstva Litovs'kogo: V 3 t. T. 1. Statut Velikogo knjazivstva Litovs'kogo 1529 roku.–Odesa: Juridichna literatura, 2002.

650 Statuti Velikogo knjazivstva Litovs'kogo: V 3 t. T. 2. Statut Velikogo knjazivstva Litovs'kogo 1566 roku.–Odesa: Juridichna literatura, 2003.

651 Chehovich V. A., Usenko I. B. Rol' III Litovskogo Statuta v politicheskoy bor'be vokrug problem kodifikacii dorevoljucionnogo prava Ukrainy // Tretij Litovskij Statut 1588 goda: Materialy resp. nauchn. konf., posvjashch. 400-letiju Tret'ego Statuta.–Vil'njus: Izd-vo Vil'njusskogo gos. un-ta, 1989.–S. 99–100.

652 Rozhkov N. A. Russkaja istorija v sravnitel'no-istoricheskom osveshchenii (Osnovy social'noj dinamiki): V 4 t. T. 3.–2-e izd.–M.—L.: Kniga, 1928.–S. 119.

653 Statuti Velikogo knjazivstva Litovs'kogo: U 3 t. T. 1. Statut Velikogo knjazivstva Litovs'kogo 1529 roku.–Odesa: Juridichna literatura, 2002.–S. 27–28, 162; ukrainskij perevod teksta–S. 25, 278.

654 Statuti Velikogo knjazivstva Litovs'kogo: U 3 t. T. 2. Statut Velikogo knjazivstva Litovs'kogo 1566 roku.–Odesa: Juridichna literatura, 2003.–S. 491, razdel VII, artikul 25–26.

655 Ibid, p. 487.

656 Ibid, p. 537.

657 Musorin A. Ju. Latinizmy v juridicheskoy terminologii Statuta Velikogo knjazhestva Litovskogo 1588 goda // Menedzhment, pravo i kul'tura.–Novosibirsk, 1997.–S. 43–46.

658 Statuti Velikogo knjazivstva Litovs'kogo: U 3 t. T. 3. Kn. 1. Statut Velikogo knjazivstva Litovs'kogo 1588 roku.–Odesa: Juridichna literatura, 2004.–S. 537.

659 Statut Velikogo knjazhestva Litovskogo: V 2 ch. CH. 2./Per. s pol'sk.–SPb.: Izd. Senata, 1811.–S. 13–15; Statuti Velikogo knjazivstva Litovs'kogo: U 3 t. T. 3. Kn. 1. Statut Velikogo knjazivstva Litovs'kogo 1588 roku.–Odesa: Juridichna literatura, 2004.–S. 538.

660 Dovnar-Zapol'skij M. V. Gosudarstvennoe hozjajstvo Velikogo Knjazhestva Litovskogo pri Jagellonah: V 2 t. T. 1.–K.: V tipografiu-un-ta sv. Vladimira., 1901.–S. 528.

661 Ibid, p. 529. In particular, at sejm session of 1568 in Gorodnya it was decided that the control over funds collected through compulsory loans was assigned on the superior hetman, and district tax collectors were prohibited to depense money collected by any credit documents, except hetman's «kvits». (Ljubavskij M. K. Ocherk istorii Litovsko-Russkogo gosudarstva do Ljublinskoj unii vkljuchitel'no.–2-e izd.–M.: Mosk. hudozhestvennaja pechatnja, 1915.–S. 275).

- 662 Statuti Velikogo knjazivstva Litovs'kogo: U 3 t. T. 2. Statut Velikogo knjazivstva
Litovs'kogo 1566 roku.—Odesa: Juridichna literatura, 2003.—S. 544-545.
- 663 Lanovik B. D., Matisjakevich Z. M., Matejko R. M. Ekonomichna istorija Ukraïni
i svitu.—K.:Vikar, 2001—S.224.
- 664 Skomorovich I. G., Reverchuk S. K., Malik Ja. J. ta in. Istorija groshej i
bankivnictva.—K.: Atika, 2004.—S. 133.
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- 666 Butinec' F. F. Istorija buhgalters'kogo obliku: U 2 ch. CH. I.—Zhitomir: PP «Ruta»,
2001.—S. 480.
- 667 Istorija Ukraïns'koï kul'turi: U 5 t. T. 5. Ukraïns'ka kul'tura XIII—pershoï polovini
XVII st.—K.: Naukova dumka, 2001.—S. 92.
- 668 Brodel' F. Material'na civilizacija, ekonomika i kapitalizm, XV—XVIII st.: U 3 t. T.
2. Igri obminu.—K.: Osnovi, 1997.—S. 176.
- 669 Koziński M. Wexsle // Bączyk M., Koziński M., Michalski, M. Papiery
Wartościowe.—Warszawa: Zakamycze, 2000.—S. 317.
- 670 Istorija ukraïns'koï kul'turi: V 5 t. T. 5. Ukraïns'ka kul'tura XIII—pershoï polovini
XVII v.—K.: Naukova dumka, 2001.—S. 92.
- 671 Bednarczyk J. Wexsel w przystępny sposób.—Warszawa: Beck, 2004.—S. 26, 38.
- 672 In «Tur Shulhan Aruh. Hoshen Mishpat», the Code of Jewish law, this form of debt
obligation is mentioned (48:1,61:3), its notion «shtar zehira» corresponded to it.
(Cennye bumagi i evrejskij zakon—www. jewish. ru/4035-7. asp).
- 673 Mamran // Evrejskaja jenciklopedija / Pod obshch. red. A. Garkavi i L.
Kacnel'sona.—SPb.: Obshchestvo dlja nauchnyh evrejskikh izdanij: V 20 t. T. 10.—Sth.
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- 674 Doliński A. Wykłady austriackiego prawa wekslowego.—Lwów: Nakładem tow.
«Biblioteka stuch. Prawa», 1912.—S. 8.
- 675 Kutsheba S. Ocherk istorii obshchestvenno-gosudarstvennogo stroja Pol'shi.—SPb.:
Izd-vo A.S.Suvorina, 1907—S.14.
- 676 Neumann M. Geschichte des Wechsels im Hansagebiete bis zum XVII
Jahrhundert.—Erlangen, 1863.—S. 14.
- 677 Tabashnikov I. G. Proshloe wexselja. Istoriko-juridicheskoe issledovanie.—Odessa:
Tip. Shtaba Odesskogo voennogo okruga, 1891.—S. 167-168.
- 678 Neumann M. Geschichte des Wechsels im Hansagebiete bis zum XVII
Jahrhundert.—Erlangen, 1863.—S. 22-29.
- 679 Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII—pershoï polovini
XVII v.—K.: Naukova dumka, 2001—S. 1086.
- 680 Polnoe sobranie zakonov . . . T. XX, №14817.
- 681 Except of money trade, known in Starodub even in the 16th century. (Slabchenko
M. E. Hozhajstvo Getmanschiny v XVII—XVIII st.: V 3 t. T.3. Ocherki torgovli i
torgovogo kapitalizma.—Odessa: Gos. izd-vo Ukrainy, 1923.—S. 28).
- 682 Hetmans P. Polubotok and K. Rasumovsky possessed considerable fortunes (the
annual income of the last one reached 600 thousand rubles). (Slabchenko M. C.

Gospodarstvo Get'manshchiny XVII–XVIII st.: U 3 t. T. 1. Zemlevolodinnja ta formi sil's'kogo gospodarstva.–Odessa: Derzh. vid-vo Ukraïni, 1923.–S. 101).

683 Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII–pershoï polovini XVII st.–K.: Naukova dumka, 2001–S. 1056-1058.

684 Since the export of silver money from Left-bank Ukraine was prohibited, this forwarded the developing of credit noncash operations too (in fact that were property exchange operations, though formally this operation was called buying or selling), debts were usually paid at contracts or fairs. (Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII–pershoï polovini XVII st.–K.: Naukova dumka, 2001–S. 1084).
685 Nacional'naja biblioteka Ukrainy im. V.I. Vernadskogo, Institut rukopisej (NBU. IR.), VIII–1662, 1.23 ob.–24 ob.

686 Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII–pershoï polovini XVII st.–K.: Naukova dumka, 2001–S. 1084.

687 If a Cossack's starshina (an staff sargeantr) could take a credit on 4% per month, the interest rate for peasants was 6%. (Slabchenko M. E. Hozhajstvo Getmanshchiny v XVII–XVIII stoletijah: V 3 t. T. 3. ocherki trgovli i trgovogo kapitalizma.–Odessa: Gosudarstvennoe izdatel'stvo Ukrainy, 1923.–S. 51).

688 Slabchenko M. E. Gospodarstvo Get'manshchiny XVII–XVIII st.: U 3 t. T. 1. Zemlevolodinnja ta formi sil's'kogo gospodarstva.–Odessa: Derzhavne vidavnicтво Ukraïni, 1923.–S. 102-103, 105-106.

689 Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura XIII–pershoï polovini XVII st.–K.: Naukova dumka, 2001–S. 1075, 1078, 1083.

690 Dilova dokumentacija Get'manshchiny XVIII st.: Zb. dokumentiv / Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 132. Zdes' i dalee sohranena specificheskaja orfografija dokumentov.

691 715 Dilova dokumentacija Get'manshchiny XVIII st.: Zb. dokumentiv /Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 132.

692 Ibid, p. 135.

693 CGIAK Ukrainy, f. 51. op. 3, delo 3318.

694 CGIAK Ukrainy, f. 51, op. 3, delo 14498, list 3.

695 719 CGIAK Ukrainy, f. 51, op. 3, delo 14498, listy 1-2.

696 Dilova dokumentacija Get'manshchiny XVIII st.: Zb. dokumentiv /Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 113.

697 Prava, po kotorym suditsja malorossijskij narod / Pod red. A. B. Kistjakovskogo.–K., 1879.–Gl. XVI, art. 1, №1.

698 Dilova dokumentacija Get'manshchiny XVIII st.: Zb. dokumentiv /Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 138-139.

699 Polnoe sobranie zakonov . . . T. XV, № 11034.

700 Slabchenko M. E. Hozhajstvo Getmanshchiny v XVII–XVIII st.: V 3 t. T. 3. Ocherki trgovli i trgovogo kapitalizma.–Odessa: Gos. izd-vo Ukrainy, 1923.–S. 50.

701 Dilova dokumentacija Get'manshchiny XVIII st.: Zb. dokumentiv /Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 138.

- 702 CGIAK Ukrainy, f. 51, op. 3, delo. 18016, listy 3-3.
- 703 CGIAK Ukrainy, f. 51, op. 3, delo 18016. list 1.
- 704 CGIAK Ukrainy, f. 59, op. 1, delo 6296, listy 19-22.
- 705 CGIAK Ukrainy, f. 59, op. 1, delo 6296, list 24.
- 706 Dilova dokumentacija Get'manshchini XVIII st.: Zb. dokumentiv /Red. L. A. Dubrovina.–K.: Naukova dumka, 1993.–S. 6.
- 707 Slabchenko M. E. Hozhajstvo Getmanshchiny v XVII–XVIII st.: V 3 t. T. 3. Ocherki trgovli i torgovogo kapitalizma.–Odessa: Gos. izd-vo Ukrainy, 1923.–S. 23.
- 708 It is uneasy sometimes to trace their activity back, because not too many documents are preserved (bills, promissory notes, business letters, extracts from accounting books etc), regarding foreign merchants and companies' activity, and fragmented witnesses about it are stored in the archives and may be found scientific researches of the XIX and XX centuries
- 709 Kulisher I. M. Ocherk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 244.
- 710 Zaharov V. N. Zapadnoevropejskie kupcy v Rossii: Jepoha Petra I.–M.: Ros. polit. jenciklopedija, 1996.–S. 178-179.
- 711 Polnoe sobranie zakonov (dalee PSZ).–T. III.–S. 335, 446.
- 712 PSZ. T. III, № 1593, № 1641; t. IV №2292, №2589.
- 713 Zaharov V. N. Zapadnoevropejskie kupcy v Rossii: Jepoha Petra I.–M.: Ros. polit. jenciklopedija, 1996.–S. 258-259.
- 714 Ibid, p. 202-203.
- 715 These and similar examples witness that in the early 18 century several Russian merchants were not aware of credit facility of West-European banking credit and took from their partners unreliable promissory notes. If their debtors were unable to pay (or in case of their dishonest attitude), they could not rely on European courts. That is why most commonly credit agreements between Russian and foreign merchants were about commodity credit. For example, in 1702 Ya. Bolotin from Vyazma supplied a hemp to a foreign merchant Kh. Brant at the amount of 730 rubles, as well as T. Elchansky (from Vyazma too) supplied a hemp to a merchant Kh. Garland at the amount of 1388 rubles. In both cases foreign merchants paid off by debt letters of their Russian debtors, that proves debt documents were widely used. (Zaharov V.N. Zapadnoevropejskie kupcy v Rossii: Jepoha Petra I.–M.: Ros. polit. jenciklopedija, 1996.–S. 213-215).
- 716 Demkin A. V. Russkoe kupechestvo XVII–XVIII vv.: Goroda Verhnevolzh'ja.–M.: Nauka, 1990.–S. 23-24.
- 717 Ionichev N. P. Vneshnie jekonomicheskie svjazi Rossii (IX–nachalo XX veka).–M.: Aspekt-press, 2001.–S. 135.
- 718 Zaharov V. N. Zapadnoevropejskie kupcy v Rossii: Jepoha Petra I.–M.:Ros. polit. jenciklopedija, 1996.–S. 204.
- 719 This resulted from simplifying of security's procedure in debt agreements concluded by Russians and foreign merchants in the first half of the XVIII century. If anteriorely it was necessary to have guarantees, then since the 20s of XVIII century the guarantees

were used more rarely. Usually they were limited to witnesses, and they were unique to bear responsibility in case of a debtor's financial insolvency, as distinct from guarantees. (Zaharov V. N. Zapadnoevropejskie kupcy v Rossii: Jepoha Petra I.–M.: Ros. polit. jenciklopedija, 1996.–S. 206-207).

720 Fedorov A. F. Istorija wekselja. Istoriko-juridicheskoe issledovanie.–Odessa: Tipografija shtaba Odeskogo voennogo okruga, 1895.–S. 74.

721 Osipov A. M. Wexsel' v ego proshedschem.–Kazan': Tip. universiteta, 1873.–S. 21-22.

722 In addition to that, the Code was firstly edited in Russian not in German (that is proved by an inscription on the front page of second edition published in St.-Petersburg: «*The Bill Code was printed in Moscow in Senate's typography, and translated from the Russian original in the Academy of Sciences in St.-Petersburg and printed in the Russian and German languages*»)(Rossijskoe zakonodatel'stvo X–XX vv.: V 9 t. T. 5. Zakonodatel'stva perioda rascveta absoljutizma / Pod obshch. red. O. I. Chistjakova.–M.: Jurid. lit-ra, 1987.–S. 421).

723 Barats S. M. Kurs weksel'nogo prava.–SPb.: T-vo «Obshchestvennaja pol'za», 1893.–S. 671.

724 Majer D. I. Ocherk russkogo weksel'nogo prava.–Kazan': Tip. universiteta, 1857.–S. 21.

725 Rossijskoe zakonodatel'stvo X–XX vv.: V 9 t. T. 5. Zakonodatel'stva perioda rascveta absoljutizma / Pod obshch. red. O. I. Chistjakova.–M.: Jurid. lit-ra, 1987.–S. 458.

726 Ibid, p. 423-458.

727 Fedorov A. F. Istorija wekselja. Istoriko-juridicheskoe issledovanie.–Odessa: Tip. Shtaba Odesskogo voennogo okruga, 1895.–S. 78.

728 Mejer D. I. Ocherk russkogo weksel'nogo prava // Mejer D. I. Izbrannye proizvedenija po grazhdanskomu pravu.–M.: AO «Centr JurInfoR», 2003.–S. 311-312.

729 We consider that the institution of state weksels represents a tendency to governmental control over weksel transactions, traced in Russia's economy of the time.

730 «*The governing Senate is aware that many peasants, taking their passports, leave their homes to seek livelihood, and borrow money on credit from merchants and sign bills. Merchants keep bills voluntarily, waiting for the interest accumulating and protest them after that*» Shershenevich G. F. Kurs torgovogo prava: V 3 t. T. 3. Wexsel'noe pravo. Morskoe pravo.–4-e izd.–SPb.: Izd-vo brat'ev Bashmakovyh, 1909.–S. 16).

731 Notarizing the weksel by a broker is not unrepugnant with this requirement, thus the weksel as a credit's instrument was free from notarization. (Mejer D. I. Ocherk russkogo weksel'nogo prava // Mejer D. I. Izbrannye proizvedenija po grazhdanskomu pravu.–M.: AO «Centr JurInfoR». 2003.–S. 314).

732 Gur'ev A. N. Ocherki razvitija kreditnyh uchrezhdenij v Rossii.–SPb, 1904 // (Reprint) Gur'ev A. N., Pamfilov S. F. Istorija Rossii: kreditnaja sistema.–M.: JUKIS, 1995.–S. 7-9.

733 Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 97.

- ⁷³⁴ Ionichev N. P. Vneshnie jekonomicheskie svjazi Rossii (IX–nachalo XX veka).–M.: Aspekt-press, 2001.–S. 139.
- ⁷³⁵ Gur'ev A. N. Oчерki razvitiya kreditnyh uchrezhdenij v Rossii.–SPb, 1904 // (Reprint) Gur'ev A. N., Pamfilov S. F. Istorija Rossii: kreditnaja sistema.–M.: JUKIS, 1995.–S. 10–11.
- ⁷³⁶ Kulisher I. M. Oчерk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 245.
- ⁷³⁷ Bankers of the court served the imperial court and the government (including foreign economic relations), first governmental banks served the nobility. On the 26 of June 1764 Empress signed a decree which declared setting up two commercial banks in St.-Petersburg to maintain trade relationships with Western Europe, and in Astrakhan to serve oriental trade. However, the Bank of Astrakhan was burnt in 1767 and was not reconstructed; the Bank of St.-Petersburg spent all its capital stock and reserve capital on crediting «the right people», after that it stopped lending operations and was closed in 1782. (Ionichev N. P. Vneshnie jekonomicheskie svjazi Rossii (IX–nachalo XX veka).–M.: Aspekt-press, 2001.–S. 165).
- ⁷³⁸ Sokolov Ja. V. Buhgalterskij uchet: ot istokov do nashih dnei.–M.: Audit, JUNITI, 1996.–S. 231.
- ⁷³⁹ Rossijskoe zakonodatel'stvo X–XX vv.: V 9 t. T. 5. Zakonodatel'stva perioda rascveta absoljutizma / Pod obshch. red. O. I. Chistjakova.–M.: Jurid. lit., 1985.–S. 418–419.
- ⁷⁴⁰ Kulisher I. M. Oчерk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 244.
- ⁷⁴¹ Kulisher I. M. Oчерk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 248.
- ⁷⁴² Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 98.
- ⁷⁴³ Lotman M. Ju. Pushkin.–SPb: Iskusstvo–SPb, 2000.–S. 492–493.
- ⁷⁴⁴ Bayer du Ollan was a friend of Jean-Batiste Tavernier (born in Paris in 1749, executed in 1793), a mason, traveler, adventurer, jeweller. Tavernier left behind interesting descriptions of credit operations application in the Orient; he is cited by Fernand Brodel. Tavernier accompanied du Ollan during his journey across Poland, Russia and Scandinavia. In spring of 1794, on the way from Moscow to Astrakhan, Bayer du Ollan visited Kiev and Kremenchug. (Franko-russkie jekonomicheskie svjazi.–M.: Nauka, 1970.–S. 162–163).
- ⁷⁴⁵ Franko-russkie jekonomicheskie svjazi.–M.: Nauka, 1970.–S. 183, 187.
- ⁷⁴⁶ Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 100–101.
- ⁷⁴⁷ In particular, the debt of major landlords the Scheremetievs attained 2 mln. rubles in 1800, in 1805 it was 2,7 mln. rubles. Prince Yusupov, who possessed 17 thousand serfs, owed 100 thousand rubles to the bank in 1787, and 693 thousand rubles in 1818. Apart from the bank credit, the Yusupovs frequently employed services of private persons; since 1816 till 1824 Yusupov jn. issued wekssels at the amount of 273 thousand rubles, his father issued wekssels at the amount of 369 thousand rubles

during the period from 1814 till 1827. (Borovoj S. Ja. Kredit i banki Rossii (seredina XVII v.–1861 g.).–M.: Gosfinizdat, 1958.–S. 111).

⁷⁴⁸ Gur'ev A. N. Ocherki razvitija kreditnyh uchrezhdenij v Rossii.–SPb, 1904 // (Reprint) Gur'ev A. N., Pamfilov S. F. Istorija Rossii: kreditnaja sistema.–M.: JUKIS, 1995.–S. 16.

⁷⁴⁹ Ibid, p. 16. The Office of court bankers existed until 1811, however, since 1807 its importance has declined. After the Ministry of Finance and its subdivision (the Special office for crediting) were established, all foreign credit operations were transferred under control of this subdivision. Baron L. I. Schtiglits (born in Germany), may be considered the last court banker, the banking house of whom was of great importance in St.-Petersburg's financial situation until the 50-s of the XIX century. At that time Russian medias wrote that the name of L. Schtiglits was as well known in the world, as Rothschild; taking Schtiglits's weksels with oneself, one can easily travel to any European country, to America or Asia, these weksels would be taken everywhere. In the late 50-s of the XIX century L. Schtiglits's influence declined, he went on to civil service, and banking houses «E. I. Guinzburg» and «Bratya Ryabushinskie» (The Ryabushinsky's brothers) became his successors. (Anan'ich B. V. Bankirskie doma v Rossii. 1860–1914 gg. Ocherki istorii chastnogo predprinimatel'stva.–L.: Nauka, 1991.–S. 14-15, 18).

⁷⁵⁰ Kulisher I. M. Ocherk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 267.

⁷⁵¹ Istorija Ukraïns'koï kul'turi: U 5 t. T. 3. Ukraïns'ka kul'tura drugoi polovini XVII–XVIII st.–K.: Naukova dumka, 2001.–S. 26-27.

⁷⁵² Brodel' F. Material'na civilizacija, ekonomika i kapitalizm, XV–XVIII st.: U 3 t. T. 1. Strukturi povsjakdenosti: mozhlive i nemozhli-ve.–K.: Osnovi, 1995.–S. 410–411; Gurzhij O. F., Chuhlib T. V. Get'mans'ka Ukraïna.–K.: Vid. dim «Al'ternativi», 1999.–S. 268-269.

⁷⁵³ Tam zhe, t. 3. CHas svitu.–K.: Osnovi, 1998.–S. 427-428.

⁷⁵⁴ In his traveller's diary during his trip to Russia Bayer du Ollan noted in 1784 that the increase of trade volume of Prussia through Memel and Koenigsberg resulted in Russia's beginning to import Polish grain via Kherson tax free. Since the import of Spanish salt to Russia was prohibited, this prevented Russia from salted meat trading (it was Spanish salt that was needed to make good quality corning) and prevented Ukraine from herd expansion. (Franko-russkie jekonomicheskie svjazi.–M.: Nauka, 1970.–S. 180).

⁷⁵⁵ Lanovik B.D., Matisjakevich Z.M., Matejko R. M. Ekonomichna istorija Ukraïni i svitu.–K.: Vikar, 2001.–S. 368.

⁷⁵⁶ Pasichnik Ju. V. Bjudzhetna sistema Ukraïni ta zarubizhnih kraïn.–K.: Znannja-pres, 2002.–S. 177, 180.

⁷⁵⁷ Anan'ich B. V. Bankirskie doma v Rossii. 1860–1914 gg. Ocherki istorii chastnogo predprinimatel'stva.–L.: Nauka, 1991.–S. 8-9.

⁷⁵⁸ All Ukrainian fairs had their own differentiation. In particular, Kharkov fairs specialized at manufacture's trade, the bidding fairs of Kiev traded agricultural

- products. Among the greatest pioneers of entrepreneurship in Ukraine brothers Yakhnenko have to be mentioned, who in the 40-s of the XIX century founded a company specializing in the manufacture of sugar. The company flourished in the 50-s of the XIX century when the company's warehouses and shops were opened in major cities of Ukraine and Russia (including Moscow and Nizhniy Novgorod), its products were also exported abroad. (Sarbej V. G. Nacional'ne vidrozhennja Ukraïni.–K.: Al'ternativi, 1999.–S. 94-95).
- 759 Lanovik B.D., Matisjakevich Z.M., Matejko R. M. Ekonomichna istorija Ukraïni i svitu.–K.: Vikar, 2001.–S. 370.
- 760 In 1817 when these accounting and insurance offices were converted into the Commercial bank, there were 17 mln. rubles in their balance, from which about 14 mln. rubles were distributed on the security of goods and loans against pledged bills, the overall volume of operations attained 49 mln. rubles. Borovoj S. Ja. Kredit i banki Rossii (seredina XVII v.–1861 g.).–M.: Gosfinizdat, 1958.–S. 126).
- 761 Gur'ev A. N. Oчерki razvitija kreditnyh uchrezhdenij v Rossii.–SPb, 1904 // (Reprint) Gur'ev A. N., Pamfilov S. F. Istorija Rossii: kreditnaja sistema.–M.: JUKIS, 1995.–S. 17.
- 762 Gur'ev A. N. Oчерki razvitija kreditnyh uchrezhdenij v Rossii.–SPb, 1904 // (Reprint) Gur'ev A. N., Pamfilov S. F. Istorija Rossii: kreditnaja sistema.–M.: JUKIS, 1995.–S. 18.
- 763 Pasichnik Ju. V. Bjudzhetna sistema Ukraïni ta zarubizhnih kraïn.–K.: Znannja-pres, 2002.–S. 182.
- 764 Levin I. I. Akcionernye kommercheskie banki v Rossii: V 2 t. T. 1.–Pg., 1917.–S. 7.
- 765 Kankrin G. Weltreichthum, Nationalreichthum und Staatswirtschaft.–München, 1921.–S. 217; Kankrin G. Die Oekonomie der menschlichen Gesellschaften und das Finanzwesen.–Stuttgart, 1845.–S. 146.
- 766 Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 104.
- 767 Merchants in trade were in another situation because the government helped them to carry out their activity, it was easy to control them through customs' help. (Borovoj S.Ja. Kredit i banki Rossii (seredina XVII v.–1861 g.).–M.: Gosfinizdat, 1958.–S. 127).
- 768 Merchants in trade were in another situation because the government helped them to carry out their activity, it was easy to controll them through customs' help. (Anan'ich B. V. Bankirskie doma v Rossii. 1860–1914 gg. Oчерki istorii chastnogo predprinimatel'stva.–L.: Nauka, 1991.–S. 12-13).
- 769 Radziszewski H. Bank Polski.–Warszawa, 1910.–S. 114-115; Voblyj K. Oчерki po istorii pol'skoj fabrichnoj promyshlennosti: V 2 t. T. 1.–K., 1909.–S. 256.
- 770 Cheskidov B.M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 104-105.
- 771 As I. I. Levin pointed out, Polish and Jewish bankers, as well as Baltic's German bankers played a significant role in creating the Russian banking system. Great amounts of money accumulated by them allowed them to export capitals to Russia.

A vivid example of a Warsaw banker Anton Frenkel may be given: he was baronized for the accomplishment of «missions of critical importance» of Russian government. (Levin I. I. *Akcionernye kommercheskie banki v Rossii*: V 2 t. T. 1.–Pg., 1917.–S. 27).

772 According to the official data, more than a half of assets that bankers brought with them to Kiev fairs in 1835–1838 belonged to the Bank of Poland (857 thousand rubles from 1,3 mln. rubles in 1836; 725 thousand rubles from 1,2 mln. rubles in 1837) (*Statisticheskoe opisanie Kievskoj gubernii*: V 3 t. T. III.–SPb., 1852.–S. 570).

773 Anan'ich B. V. *Bankirskie doma v Rossii. 1860–1914 gg. Ocherki istorii chastnogo predprinimatel'stva*.–L.: Nauka, 1991.–S. 11.

774 In 1848 a banker Vermoren proposed a project expecting to create several branch offices of Commercial bank in London and Hamburg, as well as in other foreign commercial centers, however the project was not supported (*ibid*, p. 220).

775 D. I. Mayer visited Odessa in 1850, a popularly accepted at that time center of foreign and wholesale trade, to study trade customs of Odessa described in a separate research (first published in 1853). Studying Odessa's practice of bills using in grain trade, D. I. Mayer educed legal institutions unknown to legal system. (Mejer D. I. *Juridicheskie issledovanija otnositel'no trgovogo byta Odessy. Gl. 4. Veksel'noe obrashchenie* // Mejer D. I. *Izbrannye proizvedenija po grazhdanskomu pravu*.–M.: AO «Centr JurInfoR», 2003.–S. 31).

776 Mejer D. I. *Juridicheskie issledovanija otnositel'no trgovogo byta Odessy. Gl. 4. Veksel'noe obrashchenie* // Mejer D. I. *Izbrannye proizvedenija po grazhdanskomu pravu*.–M.: AO «Centr JurInfoR», 2003.–S. 211–212, 214–216.

777 Since bills of exchange were used in Odessa, all methods provided for carrying out operations with them were used, such as several counterparts of a bill of exchange were used in case foreign partners lived in distant places, because the bill remittance could take a lot of time. In addition to that, since foreign exchange laws did not stipulate that the bill should be issued on a stamped paper, bills duplicates made in Odessa had the same legal force as the original (*Ibid*, p. 218).

778 Cheskidov B. M. *Razvitie bankovskih operacij s sennymi bumagami*.–M.: *Finansy i statistika*, 1997.–S.103–104.

779 Levin I. I. *Akcionernye kommercheskie banki v Rossii*: V 2 t. T. 1.–Pg., 1917.–S. 9.

780 Bogolepov M. I. *Gosudarstvennyj bank i kommercheskij kredit* // *Bankovaja jenciklopedija*: V 2 t. / Pod obshch. red. prof. L. N. Jasnopol'skogo. –T. 2: *Birzhi*.–K.: Tip. Kievskoj 2-j arteli, 1917.–S. 305, 307.

781 Barats S. M. *Kurs veksel'nogo prava*.–SPb.: T-vo «Obshchestvennaja pol'za», 1893.–S. 684.

782 As P. P. Citovich pointed out that it was small wonder that the first half of the XIX century the French exchange law was as prepotent as the German exchange law became in the second half of the XIX century . (Citovich P. P. *Kurs veksel'nogo prava*.–K.: *Tipografija I. N. Kushnereva i K.*, 1887.–S. 26).

783 Movchanovskij B. F. *Veksel'*.–M.: *Finansovoe izd-vo NK F SSSR*, 1927.–S. 10.

- 784 Citovich P. P. Kurschsel'nogo prava.–K.: Tipografija I. N. Kushnereva i K., 1887.–S. 27.
- 785 Osipov A. M. Wksel' v ego proshedshem i nastojashchem.–Kazan': Tip. Universiteta, 1873.–S. 21-22.
- 786 Barats S. M. Kurschsel'nogo prava.–SPb.: T-vo «Obshchestvennaja pol'za», 1893.–S. 684.
- 787 According to V. A. Belov's opinion, the bill of exchange emerged along with the commodity turnover and supplier's credit, as the bill of exchange documented the transfer of the drawer's obligation to acceptor, or crediting the drawer by the acceptor. V. A. Belov considers that the popularity of promissory note at macroeconomic scale is a symptom of unfavourable state of national economy. (Belov V. A. Ocherki po wksel'nomu pravu.–M.: JurInfoR, 2000.–S. 19).
- 788 Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 100.
- 789 Even between the end of the XIX century and the early XX century, at the time of fast development of capitalism in Ukraine, when the market has finally become saturated with merchandise, the bill of exchange did not expand, as there was neither market overstocking, no overproduction, specific to Western Europe economics.
- 790 Citovich P. P. Kurschsel'nogo prava.–K.: Tipografija I. N. Kushnereva i K., 1887.–S. 28.
- 791 P. P. Citovich thought that the attempt to implement west-european provisions of the bill of exchange and promissory note operations realised in the Code of 1832 was a failure, even more serious one than the adoption of the Code of 1729. (Citovich P. P. Kurschsel'nogo prava.–K.: Tipografija I. N. Kushnereva i K., 1887.–S. 27).
- 792 Demkivs'kij A. V. Wksel'na sprava: Navch. posibnik.–K.: L. ibid', 2003.–S. 64.
- 793 During the period from 1866 till 1870 46,8% of cost of exported goods and 20,7% of cost of imported goods fell on the Black Sea and the Azov Seaports. Gurzhij I. O. Ukraïna v sistemi vsirosijs'kogo rinku 60–90-h rokiv XIX st.–K.: Naukova dumka, 1968.–S. 139).
- 794 Kulisher I. M. Ocherk istorii russkoj trgovli.–Pg.: Atenej, 1923.–S. 267.
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- 801 In 1861-1862 there existed more than 9 thousand merchants in Ukraine, possessing sound capitals, in 1864 there were more than 16 thousand. In 1864 more than 23 thousand licenses to carry out small-scale trading were issued by guberniya's institutions; in 1885 175,9 thousand people traded in Ukraine, at the end of the XIX century they were 334,1 thousand people in trade. (Pasicchnik Ju. V. Bjudzhetna sistema Ukraïni ta zarubizhnih kraïn.–K.: Znannja-pres, 2002.–S. 178).
- 802 Private credit institutions could not develop freely before the serfdom was abolished in 1861, the railway network was constructed, the trade was activated and money circulation was expanded.
- 803 Further private credit institutions were established, such as the St.-Petersburg municipal credit society (1861), the Land bank in Kherson (1863), the Land bank in Kharkov (1871). 33 joint-stocks commercial banks existed in the end of 1872, as well as 11 joint-stock land banks and 22 mutual crediting societies. (Cheskidov B. M. Razvitie bankovskih operacij s cennymi bumagami.–M.: Finansy i statistika, 1997.–S. 111).
- 804 The permission to establish 17 new banks in 1862 with capital assets of 464 thousand rubles became the alternative to the State Bank, in 1863 there were 27 banks with capitals of 904 thousand rubles, in 1864 there were 27 banks with capitals of 710 thousand rubles. It has to be noted that in 1864 the St.-Petersburg commercial bank was set up, whose total turnover volume increased from 739195 thousand rubles in 1864 up to 1271251 rubles in 1869. (Levin I. I. Akcionernye kommercheskie banki v Rossii: V 2 t. T. 1.–Petrograd, 1917.–S. 169, 176).
- 805 M. L. Gosudarstvennyj bank. Ego sovremennoe ustrojstvo i kommercheskie operacii // Bankovaja jenciklopedija / Pod obshch. red. prof. L. N. Jasnopol'skogo: V 2 t. Tom 1. Kommercheskie banki.–K.: Tip. Kievskoj 2-j arteli, 1914.–S. 339.
- 806 It was supposed that the bank would buy foreign bills of exchange, however this activity turned out to be unprofitable, and it was prohibited in 1867.
- 807 The Bank of France's requirement was the bill of exchange to be signed by three persons, in addition to that the German Reich's bank prohibited bills of exchange discounting for a period exceeded three months. (Gambarov L. Dvadcat' pjat' let dejatel'nosti germanskogo imperskogo banka.–Riga, 1902.–S. 109).
- 808 Otchet Gosudarstvennogo banka za 1860 g.–SPb., 1861.–S. 46.
- 809 Bogolepov M. I. Gosudarstvennyj bank i kommercheskij kredit // Bankovaja jenciklopedija: V 2 t. / Pod obshch. red. prof. L. N. Jasnopol'skogo.–Tom 1. Kommercheskiebanki.–K.: Tip. Kievskoj 2-j arteli, 1917.–S. 306; 311.
- 810 According to M. I. Bogolepov's opinion, effectuating such a restricting policy, it was impossible to reduce tenor of weksels, but to increase the number of weksel rewriting, which was unprofitable for trade. However the article 27 of the Bank's Statute of 1860 limiting the tenor of weksels was annulated only in 1893, the new regulations were amended to the Statute of 1894 which allowed to receive weksels with a tenor from nine to twelve months. (Ibid. p. 306).
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- 830 Nol'ken A. Vysochajshe utverzhdenyj 27 maja 1902 goda Ustav o wekseljah. Prakticheskoe rukovodstvo.–SPb.: Pravo, 1902
- 831 Such lawyers as L.Goldshmidt, V.Endeman and others took part in the discussion. (Ustav o wekseljah. / Sost. A. I. Kaminka.–SPb.: Tip. A. E. Landau, 1902.–S. 3).

- 832 Barats S. M. Kurs weksel'nogo prava.—SPb.: T-vo «Obshchestvennaja pol'za», 1893.—S. 686.
- 833 A promissory note was an instrument of money credit in Russia. Essentially, it was an acknowledgment of debt (like a debt kabala), but corroborated by the exchange law's legal force. It is notable that in promissory note samples attached to the art. 540 of the Trade Code, the creditor was not called a note holder at all, but only a creditor. (Citovich P. P. Wksel' i zadachi ego kodifikacii v Rossii.—K.: Tip. I. N. Kushnereva i K., 1887.—S. 30–31; 50).
- 834 Among the negative consequences of bill financial solvency may be cited the expansion, manifested to the full extent in the second half of the XIX century, smashing of a number of peasants. Peasants undertook debt obligations by weksels at the amounts of 10–15 rubles, usually drawn up on different occasions in taverns. (Citovich P. P. Wksel' i zadachi ego kodifikacii v Rossii.—K.: Tipografija I. N. Kushnereva i K., 1887.—S. 5).
- 835 Ustav o wekseljah. Sost. A. I. Kaminka.—SPb.: Tipografija A. E. Landau, 1902.—S. 6.
- 836 Ustav o wekseljah. Sost. A. I. Kaminka.—SPb.: Tipografija A. E. Landau, 1902.—S. 232, 234.
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- 838 Ustav o wekseljah. Sost. A. I. Kaminka.—SPb.: Tipografija A. E. Landau, 1902.—S. 237.
- 839 A. I. Kaminka names the most archaic the provision of 1832 Statute (art. 6) that limited a number of people granted with the right to take upon themselves a weksel liability. (Ustav o wekseljah / Sost. A. I. Kaminka.—SPb.: Tipografija A. E. Landau, 1902.—S. 9).
- 840 That is why, any weksel guarantor beared the same responsibility as a person who he guaranteed (Ibid, p. 32).
- 841 Shapkin I. N. Wksel': vzniknovenie i stanovlenie // Wksel' i weksel'noe obrashchenie v Rossii: Prakt. jenciklopedija.—M.: Bankocentr, 1996.—S. 7-36.
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- 843 That is why, all people deprived, according to the art. 2's provisions, of the weksel financial solvency or limited in it (such as peasants, married women, clergymen) had the right to possess weksels (Ibid, p. 29).
- 844 In 1906 the restriction to participate in weksel liabilities were lifted from peasants, that considerably expanded the weksel financial solvency. (Demkivs'kij A. V. Wksel'na sprava: Navch. posibnik.—K.: Libid', 2003.—S. 66).
- 845 Canstein, F. von. Das Wechselrecht Österreichs.—Berlin: Carl Heymann's Verlag, 1903.—S. 175-179.
- 846 The Statute's legal force did not cover Poland, where its own exchange law existed. (Shershenevich G. F. Kurs torgovogo prava: V 3 t. T. 3. Wksel'noe pravo. Morskoe pravo.—4-e izd.—SPb.: Izd-vo brat'ev Bashmakovyh, 1909.—S. 17).
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A *Weksel* is a generic form of a Bill of Exchange (Bill), or a Promissory Note, or whose legal framework and financial characteristics were developed over a long period of time during which it evolved into its present state. It is impossible to correctly estimate the economic-legal essence of this peculiar financial tool if the history of the *weksel* and its procedure are not studied. Though there are plenty of sources about *weksel* operations, including some aspects of their history, there are none, until this work, that are directly connected to the history of *weksel* development and evolution.



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